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In the Supreme Court of the United States

OCTOBER TERM, 1931

NO. 19

LETUS N. CROWELL, as Deputy Commissioner for the Seventh Compensation District of the United States Employees' Compensation Commission, PETITIONER

v.

CHARLES BENSON

NO. 20

LETUS N. CROWELL, as Deputy Commissioner for the Seventh Compensation District of the United States Employees' Compensation Commission; and J. B. KNUDSEN, Petitioners,

v.

CHARLES BENSON

On writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. 185-190) is reported in 45 F. (2d) 66. The opinion of the District Court (R. 18-25) is reported in 33 F. (2d) 137, and a supplemental opinion of the District Court is reported in 38 F. (2d) 306.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The Fifth Amendment, so far as pertinent provides:

> "No person shall * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."

Article 3, Section 1 of the Constitution provides:

> "The judicial power of the United States shall be vested in one Supreme Court, and in such Inferior Courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and Inferior courts, shall hold their offices during good behavior and shall at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office."

Article 3, Section 2, provides in part as follows:

> "The judicial power shall extend; to all cases of admiralty and maritime jurisdiction * * ."

The Longshoremen's and Harbor Workers' Compensation Act of Mar. 4, 1927, Chap. 509, provides in Section 2, 44 Stat. 1424, 33 U. S. C. A., Sec. 902, as follows:

> "The term 'injury' means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an

injury caused by the willful act of a third person directed against an employee because of his employment.

The term 'employee' does not include a master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

The term 'employer' means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry dock.)

The term 'deputy commissioner' means the deputy commissioner having jurisdiction in respect of an injury or death."

Section 3 (33 U. S. C. A. Sec. 903) provides as follows:

"Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

(b) No compensation shall be payable if the injury was occasioned solely by the intoxi-

cation of the employee or by the willful intention of the employee to injure or kill himself or another. (Mar. 4, 1927, c. 509, Sec. 3, 44 Stat. 1426.)"

Section 4 (33 U. S. C. A. Sec. 904) provides in part as follows:

"(a) Every employer shall be liable for and shall secure the payment to his employee of the compensation payable under sections 907, 908 and 909 of this chapter. * * * "

Section 19 (33 U. S. C. A., Sec. 919) provides in part as follows:

"(a) Subject to the provisions of section 913 of this chapter a claim for compensation may be filed with the deputy commissioner in accordance with regulations prescribed by the commission at any time after the first seven days of disability following any injury, or at any time after death, and the deputy commissioner shall have full power and authority to hear and determine all questions in respect of such claim.

(b) Within ten days after such claim is filed the deputy commissioner, in accordance with regulations prescribed by the commission, shall notify the employer and any other person (other than the claimant), whom the deputy commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered mail.

(c) The deputy commissioner shall make or cause to be made such investigations as he he considers necessary in respect to the claim, and upon application of any interested party shall order a hearing thereon. If a hearing on such claim is ordered the deputy commissioner

shall give the claimant and other interested parties at least ten days' notice of such hearing served personally upon the claimant and other interested parties or sent to such claimant and other interested parties by registered mail, and shall within twenty days after such hearing is had, by order, reject the claim or make an award in respect of the claim. If no hearing is ordered within twenty days after notice is given as provided in subdivision (b), the deputy commissioner shall, by order, reject the claim or make an award in respect of the claim.

(d) At such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose."

Section 21 (33 U. S. C. A., Sec. 921) provides as follows:

"(a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this chapter, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal District Court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts

required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

(c) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the Supreme Court of the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 918 of this chapter. (Mar. 4, 1927, c. 509, Sec. 21, 44 Stat. 1436)."

STATEMENT OF CASE.

On December 26, 1928, Letus N. Crowell, Deputy Commissioner for the seventh compensation district, purporting to act under the Act of Congress known as the "Longshoremen's and Harbor Workers' Compensation Act," entered an award in favor of J. B. Knudsen against Charles Benson. (Rec. p. 83-84). In the proceedings before the Deputy Commissioner, Benson had expressly denied that the relationship of employer and employee existed at the time of the claimant's injury (Rec. p. 6, Ex. B. to complaint, Rec. p. 94.) On January 24, 1929, Charles Benson filed a bill of complaint against Crowell and Knudsen seeking to enjoin the award on the ground that it was not in accordance with law, for the reason that Knudsen was not an employee of Benson at the time he was injured, so that the Deputy Commissioner had no jurisdiction to make the award (Rec-pages 1-8). Crowell and Knudsen separately filed a motion to dismiss the bill of complaint upon several grounds taking the point in effect, that the bill of complaint failed affirmatively to show that "there was no competent evidence before the Deputy Commissioner to support his order sought to be enjoined" (Rec. pages 12-16). The District Court overruled the motions, thereby holding merely that the bill of complaint was not legally insufficient on any of the grounds specified (Rec. page 26). The Court in its opinion, (Rec. pages 17-25), after expressing the view that the motions to dismiss should be overruled (Rec. p. 25), stated that "the Court will grant a hearing on the facts and the law, to ascertain if the proceedings before the Deputy Commissioner were in accordance with law". (Rec. p. 25).

The respondents then answered the complaint and made an issue of whether or not the claimant was employed by Benson in such wise as to bring him under the Longshoremen's and Harbor Workers' Compensation Act, and his claim for injuries suffered within the jurisdiction of the Deputy Commissioner (Rec. p. 27, Rec. p. 28). Thereafter, both respondents appeared, and without objection or exception (Rec. p. 28) entered upon a trial, at which the testimony of witnesses was offered in open Court. In fact, the respondents offered the oral testimony in open Court of the first two witnesses introduced. (Rec. pages 29-34). The record before the Deputy Commissioner was offered by respondents at the hearing before the District Judge and was admitted by the Court over complainant's objections, (Rec. p. 55) but was not read to the Court (Rec. p. 176).

There appears in the record of the Deputy Commissioner immediately before his so-called "Findings of Fact" (Rec. p. 7, Rec. p. 83), the following recital, viz:

> "Such investigation in respect to the above entitled claim having been made as is considered necessary, and a hearing having been held in conformity with law, the Deputy Commissioner makes the following:
>
> 'Findings of Fact'".

It thus appears that the Deputy Commissioner had made such investigation in respect to the claim as he "considered necessary", and in addition, held a hearing. It does not appear from the record what the investigation consisted of, nor what facts it dis-

closed, so that it affirmatively appeared that the record did not disclose all of the evidence or facts upon which the Commissioner acted, but only disclosed the testimony taken before him at the hearing.

The District Judge found under the evidence produced before him that Knudsen was not an employee of Benson at the time he was injured (Rec. p. 176) and consequently the Deputy Commissioner's award was not in accordance with law and was void for want of jurisdiction in said Deputy Commissioner to make such an award.

Assuming that petitioners, after entering upon the hearing before the District Judge on testimony taken de novo, without objection or exception on their part, are in position to question the decision of the District Judge, solely on the ground that the hearing should have been upon the record of the evidence taken before the Deputy Commissioner, there is involved in this case the nature and extent of the power of the Federal District Judges to review and correct awards made under the Longshoremen's and Harbor Workers' Compensation Act.

SUMMARY OF ARGUMENT.

I.

The ruling on the motions to dismiss the bill of complaint did not raise the question of whether the cause was triable de novo, or in admiralty, and petitioners entered upon a de novo trial in the District Court, offered evidence and took their chance of a favorable decision, without objection or exception to such procedure, and should not be heard to complain that the proceedings were irregular or erroneous

Comissioner of Rd. Imp. Dist. No. 2 v. St. Louis S. W. Ry. Co., 257 U. S., 547.
Reavis v. Fianza, 215 U. S., 16, 25.

II.

The only issue in fact tried and decided by the District Judge was whether or not the petitioner, Knudsen, was an employee of Benson. If he was not, the Deputy Commissioner had no power or jurisdiction to enter an award in his favor.

Ng Fung Ho v. White, 259 U. S., 276.
United States v. Grimley, 137 U. S., 147.
Crowell v. Benson, 45 Fed., (2d) 66.
Pine v. State Industrial Comm., 108 Okla., 185.
Borgnis v. Falk Co., 147 Wis., 327.
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Hunter v. Colfax Consol. Coal Co., 175 Ia., 245.
Uphoff v. Industrial Board of Ill., 271 Ill., 312.
Hahnemann Hospital v. Industrial Board of Illinois, 282 Ill., 316.
Thede Bros. v. Industrial Commission, 285, Ill., 483.
Paul v. Industrial Commission, 288 Ill., 532.
Dorlon Bros. v. Industrial Acc. Comm. of Cal., 173 Cal., 250.
Roberts v. Industrial Acc. Comm., 52 Cal. App. 31.
Industrial Comm. of Utah v. Evans, 52 Utah, 394.

The jurisdiction of the Deputy Comissioner being special and limited, the District Court had the right to determine, on its independent judgment of the law and the evidence offered before it, whether jurisdiction to make the award existed, or whether the Deputy Commissioner acted beyond and without his jurisdiction. Fundamental and jurisdictional questions are always open to determination in the

courts, whether the order or decision be made by a court of special or limited jurisdiction, or by an administative board or body; the question of whether such a board or body acted within or beyond its jurisdiction, being always a judicial question.

Ng Fung Ho v. White, 259 U. S., 276.
United States v. Grimley, 137 U. S., 147.
Hawkins v. Bleakly, 243 U. S., 210, 215.
Kempe's Lessee v. Kennedy et al., 5 Cranch, 173, 185.
McClaughry v. Deming, 186 U. S., 49, 63.
Runkle v. United States, 122 U. S., 543, 555.
Givens v. Zerbst, 255 U. S., 11, 19.

III.

There has been some discussion as to whether a deputy commissioner is to be regarded as a judicial, or as an administrative officer, but it is clear to be seen from the statute, that his powers are wholly dependent upon the existence of the relation of employer and employee. When this relation exists he is authorized to consider the facts before him and to make an award. When this relation does not exist he has no power whatever. The question as to whether such an award is subject to review de novo upon matters other than the jurisdictional facts does not seem to us to be material, as it was the finding of the court in this case that the jurisdictional facts did not exist.

And again since it is provided by the Constitution that no citizen shall be deprived of life, liberty and property without due process of law, what difference does it make under what classification we may place the commissioner? Surely it matters not from what source authority may be obtained or

what powers Congress may attempt to confer upon him, he can never be so empowered as to enable him to condemn a citizen to liability to another, by any proceedings which may be beyond the limits of his jurisdiction and this propositon is accentuated when it appears, as in this case, that the order has not been based entirely upon the evidence produced at a hearing, but has been based, at least in part, upon the information obtained by him from other sources.

The necessary result of the filing of the compensation order making an award, is to cast upon the court the duty to determine whether the order was made and served in accordance with law or not. And to enforce obedience if the order was made in accordance with the law. Act of March 4, 1927, c. 509, Sec. 21, 44 Stat. 1436, 33 U. S. C. A. Sec. 921.

This provision applies whether the order is made without a hearing or is based upon the evidence produced at a hearing, and whether the commissioner does or does not report the evidence to the court. The result is that unless the court may make independent inquiry as to the jurisdictional fact of employment, the order of the comissioner may subject the property of the alleged employer, to execution, based upon some private misinformation, the nature or extent of which can not be learned, and his conclusion cannot be reviewed in any court of justice. To illustrate, let us observe that the report or finding upon which the award is based, the enforcement of which is enjoined in this case does not disclose to what extent, if at all, the commissioner's conclusion that the jurisdictional fact of employment existed, was based upon the evidence offered at the hearing, of which he preserved a rec-

ord. On the contrary, it indicates that the report was based, in whole or in part, on private investigations made by the commissioner, the nature, extent and result of which are not revealed in the report or finding (Rec. p. 7). Attention is called to the fact that while Subdivision (b) of Sec. 23 of the Act requires the commissioner to preserve a record of his proceedings at any hearing, he is not required to make any record or report of such other investigations as he may, and did in this case, make and upon which he, in part, based his findings as shown by his report.

It is, therefore, respectfully submitted:

That to limit the court, in its review of the jurisdictional facts, to a consideration of the evidence offered before the Commissioner, at the hearing, would not only violate the rule, that the finding of jurisdictional facts by a court or board of limited jurisdiction is always open to collateral attack, but it would make it impossible for the court to consider the question of jurisdiction at all, since the commissioner was not required to and did not reveal in his report either the nature or result of the private inquiries upon which he relied in part or in whole for his finding, so that such findings as he made could not be reviewed except upon a proceedings **de novo.**

IV.

There is no express provision in the act for an appeal only on questions of law or that the Deputy Commissioner's finding of facts shall be conclusive if supported by any substantial evidence. The method of review provided is in a court ordinarily of

original jurisdiction only, and the proceeding prescribed is original in character. There is no provision in regard to how the proceedings in the District Court shall be heard, nor as to what papers shall be filed or what testimony given. There is no provision that the proceedings shall be upon a transcript of the proceedings before the commissioner or for bringing up a record by bill of exceptions. Every consideration exists in this case that influenced the court to hold in the case of Liu Hop Fong v. United States, 209 U. S., 453, 461-2, that a Chinaman appealing to the District Court from the judgment or order of a United States Commissioner in cases arising under the Chinese Exclusion Law, is entitled to a trial **de novo.**

The case is one within the admiralty and maritime jurisdiction, and even on appeal in such cases unless Congress has clearly indicated the contrary, the trial is **de novo** both on the law and the facts.

The expression "not in accordance with law" is equivocal and should not be so construed as to take away jurisdiction of admiralty cases of this character expressly and clearly conferred on the federal courts.

The act if construed to accord a hearing **de novo** in the District Court, will not materially affect a speedy hearing in most cases, and if it did, justice should not be sacrificed to speed, nor should the clear jurisdiction conferred on district courts be withdrawn by implication from an argument of convenience.

The fact that while the act is modelled on the New York Act, it omits the provisions of that act,

making the finding of the Commissioner final on all questions of fact and providing for the certifying only of questions of law, is strongly indicative that Congress never intended an appeal only on questions of law.

Conceding the power of Congress, a party should not be deprived of the security of a judicial hearing heretofore plainly provided for, unless that result is made necessary by clear and unmistakable language which is not the case with the Longshoremens' and Harbor Workers' Compensation Act.

V.

The case or controversy now involved is a case or controversy under a new system of admiralty or maritime rules, and the application of those rules to a past state of facts, so as to determine liability vel non as between a contesting employer and employee, involves the exercise of the judicial power of the federal government, which under Article 3, sections 1 and 2 of the Constitution can only be exercised by a constitutional court created under said Article of the Constitution.

Ex parte Bakelight Corporation, 279 U. S., 438.

American Insurance Co. v. Carter, 1 Peters, 511, 546.

Den v. Hoboken Land & Imp. Co., 18 How., 272.

Kansas v. Colorado, 206 U. S., 46.

Any attempt by the Congress to confer this judicial power or jurisdiction on any federal administrative officer, board or legislative court would violate said Article 3, sections 1 and 2 of the Constitution, and likewise would violate the due process clause of the Fifth Amendment, because it is not

the process provided for such cases by the Constitution.

Martin v. Hunter's Lessee, 1 Wheaton, 304.
Ng Fung Ho v. White, 259 U. S., 276.

To say the least of it, to construe the act under consideration as contended for by petitioners would raise a grave question as to its constitutionality which should always be avoided, if possible.

United States v. Jim Fuey May, 241 U. S., 394, 401.
United States v. La Franca, 282 U. S., 568.
Russian Vodunteer Fleet v. United States, 282 U. S., 481.

ARGUMENT

I.

THERE BEING NO OBJECTION OR EXCEPTION TO THE TRIAL COURT'S HEARING THE CASE DE NOVO, NOR TO HIS TRANSFERRING IT TO THE ADMIRALTY DOCKET, THE QUESTIONS RELIED ON AS ERROR WERE NOT RAISED.

There are only two specifications of error upon this record.

1. That the court erred in holding that there was a right of trial de novo in the District Court, and that the act was unconstitutional unless there was that right.

2. That the court erred in holding that the injunction proceedings authorized by the act should be heard in admiralty rather than in equity.

The Act itself (Sec. 21 (b), 44 Stat. 1424; 33 U. S. C. A. Sec. 921) provides that:

"If not in accordance with law a compensation order may be suspended or set aside in

whole or in part through injunction proceedings mandatory or otherwise, brought by any party in interest against a deputy commissioner making the order and instituted in the Federal District Court, of the judicial district in which the injury occurs."

It is indisputable, therefore, that the jurisdiction to suspend or enjoin enforcement of this order of award is vested in the United States District Court, and that the parties submitted this cause for decision to that court, and that that court rendered a decree therein. The mere fact that the jurisdiction of the District Court extends to various subject matters some of which are matters in equity and some of which are matters in admiralty, does not seem to us to affect the identity of the court in any way, or to make it material to the validity of the decree whether the proceedings are referred to as in equity or in admiralty. The question as to whether the litigation is in equity or in admiralty, depends upon the nature of the subject matter and not upon the name by which it is referred to by the parties, and in either event the jurisdiction of the court to decree is the same. The decree was a decree of the District Court of the United States which was required to determine the matter. Upon what docket the case was entered for trial was a question which affected only the convenience of the court.

The first assignment is to the holding of the Court of Appeals that there was a right of trial de novo in the District Court, and that the Act was unconstitutional unless there was that right. The decree, however, did not hold that there was a right of trial de novo in the District Court, or that the Act

was unconstitutional unless that right was accorded. It consisted of four paragraphs which adjudge:

1. That the claimant was not an employee of the complainant who is the alleged employer.

2. That the report was not in accordance with the law.

3. That the injunction should issue against its enforcement.

4. That the claim was thereby rejected and dismissed.

This decree adjudicated only one fact, namely, that the proceedings before the commissioner were not in accordance with the law for the reason that the claimant was not an employee of the alleged employer, who was the complainant, and that for this reason the commissioner had no jurisdiction in the matter, and the award was not, therefore, made in accordance with the law.

We respectfully submit that the question sought to be presented by the first assignment was not raised by any objection or exception in the trial court. The respondents filed a motion to dismiss the bill of complaint upon several grounds, the substance of all of these grounds being that the bill of complaint should have set out the testimony before the Deputy Commissioner, so that the Court could determine from this testimony whether the award of the Deputy Commissioner was in fact contrary to law. The complaint complied with Equity Rule 25, in that it contains "a short and simple statement of the ultimate facts upon which the plaintiff asks relief, omitting any mere statement of evidence." At any event, the ruling on the motion

to dismiss did not involve the question now sought to be presented to this court under the first assignment. It only involved the question of the sufficiency of the bill of complaint as a matter of pleading. While it is true that the District Judge in his opinion, which was handed down preliminary to the ruling on the motion to dismiss, did express the view that the complainant was entitled to a trial **de novo**, the fact remains that the ruling on the pleadings did not involve this question and the further fact is that respondents did not thereafter raise the question by any objection or exception to the hearing of the evidence **de novo** (Rec. p. 28). On the contrary, it appears that without either objection or exception, they entered upon a trial **de novo** before the District Judge, and themselves offered the first two witnesses that were produced at this hearing. (Rec. p. 29-34). And as pointed out, the decree involved merely a holding that the order of the deputy commissioner was without his jurisdiction, for the reason that the claimant was not an employee.

We submit that having entered upon the trial of this case on testimony taken **de novo** before the District Judge without either objection or exception, and having taken the chance of a favorable decision from the District Judge on testimony so produced, the petitioners were not and are not entitled to have reviewed the question of the right of the complainant to a trial **de novo**. The situation is exactly similar to that which existed in the case of Commissioners of Road Improvement District No. 2 v. St. Louis, S. W. Ry Co., 257 U. S., 547, where it was held that error could not be predicated on the action of the District Court in withdrawing a case

from the jury and making findings without objection or exception by the parties.

And in principle the situation is the same that is involved in the many cases which hold that one who submits to a trial, without objection or exception cannot, on appeal, complain that such proceedings were irregular or erroneous.

Reavis v. Fianza, 215 U. S., 16, 25.
Wood v. Wilbert, 226 U. S., 384, 386.
Burbank v. Bigelow, 154 U. S., 558.
Perego v. Dodge, 163 U. S., 160.
Brown Bonnell & Co., v. The Lake Superior Iron Co., 134 U. S., 530.
Reynes v. Dumont, 130 U. S., 354.
Kilbourn v. Sunderland, 130 U. S., 505.
Louisville and Nashville R. R. Co. v. Cook Brewing Co., 223 U. S., 70, 81.

The second assignment relates only to the side of the docket upon which the case was entered, and there was likewise no objection or exception raising this question. Furthermore, we submit that the subject matter is in admiralty, but that the name by which the proceedings may be called is of no importance.

II.

THE DISTRICT COURT HAD THE RIGHT TO DETERMINE FOR ITSELF THE JURISDICTIONAL QUESTION OF WHETHER THE RELATION OF EMPLOYER AND EMPLOYEE EXISTED.

The decision of the District Court which was affirmed on appeal was predicated solely on the finding by the Court that the petitioner, Knudsen, was not an employee of Benson at the time of the in-

juries complained of. This was an issue before the Deputy Commissioner and necessarily involved his jurisdiction to make an award under the Longshoremen's and Harbor Workers' Compensation Act.

Nogueira v. New York, N. H. and H. R. Co., 281 U. S., 128.
Crowell v. Benson, 45 Fed. (2nd) 66.
Pine v. State Industrial Comm., 108 Okla. 185.
Borgnis v. Falk Co., 147 Wis., 327.
Courter v. Simpson Construction Co., 264 Ill., 488.
Hunter v. Colfax Consol. Coal Co., 175 Ia., 245.
Uphoff v. Industrial Board of Ill., 271 Ill., 312.
Hahnemann Hospital v. Industrial Board of Illinois, 282 Ill., 316.
Thede Bros. v. Industrial Commission, 285 Ill., 483.
Paul v. Industrial Commission, 288 Ill., 532.
Dorlon Bros. v. Industrial Acc. Comm. of Cal., 173 Cal., 250.
Roberts v. Industrial Acc. Comm., 52 Cal. App., 31.
Industrial Comm. of Utah v. Evans, 52 Utah, 394.

In view of the fact that the District Court found that the relationship of employer and employee did not exist and, therefore, that the Deputy Commissioner was without jurisdiction to make any award, the only question directly and necessarily involved in this case is whether the District Court could properly hear evidence on this jurisdictional fact and determine its existence **vel non** according to his independent judgment, or whether he must accord to the Deputy Commissioner's finding (if finding there was) conclusive effect, if there was any "substantial" evidence to support it.

Assuming for the purposes of the present discussion that under the act in question, the Deputy Commissioner acts only in an administrative capacity, we respectfully maintain that the District Court had jurisdiction and authority to determine, on its own independent judgment and upon evidence produced before and heard by it, the question of whether this jurisdictional prerequisite in fact existed.

Even in those states where it is held that the commissioner or commission acts merely in an administrative capacity, it is affirmatively held that the act would violate a constitutional provision vesting judicial power in the courts of the state, if the act should be construed as taking away from the courts the power to determine for themselves whether jurisdiction in fact existed.

Borgnis v. Falk Co., 147 Wis., 327.
Hunter v. Colfax Consol. Coal Co., 175 Ia., 245.

The Deputy Commissioner, having only a limited and special jurisdiction, his finding that he had jurisdiction is not binding on the District Court when it comes to review the question of whether as a matter of fact he did have jurisdiction. The bill of complaint in this case expressly alleges facts which show that the Deputy Commissioner did not have jurisdiction of this case, because according to those allegations, Knudsen was not an employee so as to bring him within the benefits of the Statute. Unless he was such an employee, then the Deputy Commissioner had no jurisdiction to enter an award, and on review, whatever may be true of other matters, the District Court had the right to detemine

for itself whether the Deputy Commissioner in fact had jurisdiction. This necessitated an inquiry into the facts in regard to the nature of the employment of Knudsen at the time he was injured. As to such facts, the District Court on review was not bound by the findings of the Commissioner, but could re-examine the facts and the law and determine for itself whether the Deputy Commissioner had jurisdiction to act.

In this case the court has only undertaken to determine for itself the jurisdictional question of whether the claimant was an employee of respondent engaged in a maritime employment or service at the time he was injured aboard a vessel on navigable waters.

The exact situation in principle existed in the case of Ng Fung Ho. v. White, 259 U. S., 276. One admittedly an alien or not claiming to be a citizen was subject to deportation on executive order. But it was nevertheless held that where he made a bona fide claim of citizenship which he supported by evidence, he was entitled to have the jurisdictional question of citizenship vel non tried de novo before the court and upon its independent judgment.. Mr. Justice Brandeis, in that case says very pertinently:

> "Here the proceeding is throughout executive in its nature.
>
> Jurisdiction in the executive to order deportation exists only if the person arrested is an alien. The claim of citizenship is thus a denial of an essential jurisdictional fact. The situation bears some resemblance to that which arises where one against whom proceedings are being taken under the military law denies that he is in the military service. It is well settled

that in such a case a writ of habeas corpus will issue to determine the status. * * If the jurisdiction of the Department of Labor may not be tested in the courts by means of the writ of habeas corpus, when the prisoner claims citizenship and makes a showing that his claim is not frivolous, then obviously deportation of a resident may follow upon a purely executive order, whatever his race or place of birth; for, where there is jurisdiction, a finding of fact by the executive department is conclusive * * .

To deport one who so claims to be a citizen obviously deprives him of liberty, as was pointed out in Chin Yow v. United States, 208 U. S., 8, 13, 28 Sup. Ct. 201, 52 L. Ed., 369. It may result also in loss of both property and life, or of all that makes life worth living. Against the danger of such deprivation without the sanction afforded by judicial proceedings, the Fifth Amendment affords protection in its guarantee of due process of law. The difference in security of judicial over administrative action has been adverted to by this court. Compare United States v. Woo Jan, 245 U. S., 552, 556, 38 Sup. Ct. 207, 62 L. Ed., 466; White v. Chin Fong, 253 U. S. 90, 93, 40 Sup. Ct. 449, 64 L. Ed., 797".

Now the jurisdiction to entertain the claim at bar under the instant Act of Congress depends upon the question of whether the relationship of employer and employee existed at the time of Knudsen's injury—the existence of that jurisdictional requisite is denied by Benson, who asserts that Knudsen did not stand in the relation of employee—surely then Benson, a citizen, ought not be deprived of his property without a trial of the facts involving that jurisdictional question by the agency appointed by the Constitution—a trial de novo and attended, as the Supreme Court says, with the security afforded

by judicial proceedings. We submit that the case of Ng Fung Ho is conclusive of the right to a trial de novo on the issue of employment vel non, which was the only question passed upon by the trial court.

Similarly on the question of enlistment so as to confer jurisdiction on a court-martial, the jurisdictional fact of enlistment vel non is open to review in the civil courts, which act upon the evidence before them and upon their independent judgment of the facts and the law.

United States v. Grimley, 137 U. S., 147; 34 L. Ed., 636.

Ex parte Dostal, 243 Fed., 664, 668-9.

And a civil court may determine on habeas corpus whether an individual "was a person serving with the armies of the United States in the field," so as to be "subject to military law" and to trial by Court-martial.

Ex parte Falls, 251 Fed., 415.

And whether an individual was in fact an alien and so illegally certified by selective draft local and district boards to be in the military service and subject to Court-martial, is a question of jurisdiction and of fact open to the civil courts on habeas corpus.

Ex parte Beck, 245 Fed., 967, 969.

And likewise the courts in extradition proceedings, may ascertain upon evidence introduced on application for a writ of habeas corpus whether the individual is the identical person charged as a fugitive from justice, and generally whether he is a fugitive from justice and so subject to extradition and this in spite of the fact that the Governor of the State has satisfied himself that the issuance of the extradition warrant is proper.

Ex parte Chung Kin Tow, 218 Fed., 185.
Robb v. Connolly, 111 U. S., 624; 28 L. Ed., 542.
Hyatt v. Corkran, 188 U. S., 691.
McNichols v. Pease, 207 U. S., 100.

In Borgnis v. Falk Co., 147 Wis., 329, the court in speaking of a State Industrial Commission administering the State Workmen's Compensation Act said:

> "The decision of such a board may be made conclusive when the board is acting within its jurisdiction, not otherwise. Hence the question of its jurisdiction is one always open to the courts for review. It cannot itself conclusively settle that question, and thus endow itself with power. * * *
>
> The Industrial Commission must, of course, decide these questions in any case where they are raised; but it cannot decide them conclusively, for they are jurisdictional questions on which its right to act at all depends. They must be open to review in some court of competent jurisdiction; otherwise, the parties would be denied due process of law. The tribunal only has authority over those who have voulntarily elected to give it authority, and if it can decide finally that a man has given consent, when he has not, it assumes the functions of a court.
>
> If the act before us took away from the courts the power to consider these jurisdictional questions, either expressly or by necessary implication, the contention that judicial power had been vested in the commission, contrary to the command of the Constitution, would be of greater force; but we think that the act does not do this, or attempt to do it. True, it says that the findings of fact made by the commission shall, in the absence of fraud be conclusive; but it provides for an action in the circuit court of

Dane county, in which the board's award may be set aside upon either of three grounds, viz.: (1) That the board acted without or in excess of its powers; (2) that the award was procured by fraud; and (3) that the findings of fact do not support the award. * * *

We regard the expression 'without or in excess of its powers' as substantially the equivalent, or at least as inclusive of the expression 'without or in excess of its jurisdiction,' as those words are used in certiorari actions to review the decisions of administrative officers and bodies. We know of no other construction that can be logically given to them, and it seems to us that they were designedly and advisedly inserted by the framers of the bill to meet the very objection which is now made. With this construction, it is certain that the constitutional powers of the courts have not been invaded, and that no man without his consent can be brought under the law or is deprived of his right to 'due process of law' thereby."

In Hawkins v. Bleakly, 243 U. S., 210, 215, the court was called upon to determine whether the procedure under the Iowa compensation act was due process. Under that act in case of disagreement between employer and employee, the Industrial Commissioner called for the formation of an arbitration committee of three. This committee made such inquiries and investigations as it deemed necessary and reported to the Industrial Committee. In the event a review is claimed, the commissioner hears the evidence and makes the decision which may be presented to the county court which shall render a decree thereon as if in a suit heard and determined by the court. There is an express provision that there shall be no appeal on a question of fact,

but the Supreme Court of Iowa held in the case of Hunter v. Colfax Colsolidated Coal Co., 175 Ia., 245:

> "Appeal is provided from the decree enforcing the award on which all save pure questions of fact may be reviewed . . . We hold that though the act does not in terms provide for judicial review, except by said appeal, the statute does not take from the court all jurisdiction in the premises . . . We are in no doubt that the very structure of the law of the land, and the inherent power of the courts, would enable them to interfere, if what we have defined to be the jurisdiction conferred upon the arbitation committee were by it exceeded—**could inquire whether the act was being enforced against one who had rejected it, whether the claiming employe was an employe**, whether he was injured at all, whether his injury was one arising out of such employment, whether it was due to intoxication of the servant, or self-inflicted or, acceptance being conceded, into whether an award different from the statute schedules had been made, into whether the award were tainted with fraud on part of the prevailing party, or of the arbitration committee, and into whether that body attempted judicial functions, in violation of or not granted by the act." (Italics ours).

This court in Hawkins v. Bleakly, supra, after quoting the above portion of said opinion, said:

> "Thus it will be seen that the act prescribes the measure of compensation and the circumstances under which it is to be made, and establishes, administrative machinery for applying the statutory measure to the facts of each particular case; provides for a hearing before an administrative tribunal, and for judicial re-

view upon all fundamental and jurisdictional questions".

And among the "fundamental and jurisdictional questions" open for judicial review under the act as construed by the Iowa Supreme Court is the inquiry "whether the claiming employe was an employe."

In the case of Courter v. Simpson Construction Co., 264 Ill., 488; the Supreme Court of Illinois in passing upon the question of whether the parties to an award under the Workmen's Compensation Act of Illinois, were entitled to have a review of the decisions of the industrial board by a court, said:

> "It seems clear that the Legislature would have no power to deprive the parties of the right to have a court review the action of the board to the extent of determining whether the board had acted illegally or without jurisdiction. To deny a court review of those questions would violate the due process of law provision of the Constitution. * * * * The industrial board has no jurisdiction to apply the act to persons or corporations who are not subject to its provisions nor to an accident not within the provisions of the act. If it did so it would not be 'acting within its powers,' and it would seem essential that there must be some remedy for a review by some proper court of the question whether the board acted within its powers."

In Uphoff v. Industrial Board of Illinois, 271 Ill., 312, the question was whether a particular employee came within the provisions of the compensation act and, therefore, whether the industrial board had jurisdiction to enter an award. The Court said:

"Counsel for defendant in error Bruner contends that the decision of the Industrial Board under this statute is decisive of this question and cannot be inquired into by the courts. This contention cannot be supported. The decision of the Industrial Board is only binding when it is acting within its powers. This court said in Courter v. Simpson Construction Co., 264 Ill. 488, 106 N. E. 350, that 'the Industrial Board has no jurisdiction to apply the act to persons or corporations who are not subject to its provisions, nor to an accident not within the provisions of the act,' and that if it did so the remedy was in the courts."

In Industrial Commission of Utah v. Evans, 52 Utah 394, the court said:

"It is contended, however, that the commission must decide whether it has jurisdiction or not in a given case, and that its decision is final. This presents the very crux of the question.

The statute, as we have seen, does not in express terms invest the commission with such a power. The statute merely says that the commission has jurisdiction respecting the questions 'pertaining to the payment of compensation and benefits, and its decisions thereon shall be final.' This language, neither in express terms nor by necessary implication, confers exclusive power upon the commission to determine the ultimate questions of whether in a given case either the employer or the employe comes within the act. In the statute it is apparently assumed that both the claimant and the employer come within the act. If that fact is conceded or not disputed, nothing remains, as a matter of course, save to determine the character and extent of the injury and to fix the amount of compensation and the terms and conditions of payment, and matters pertaining thereto, as provided in

the act. Where, however, as here, the right of the commission to proceed under the act is challenged at the very threshold of the proceeding to allow compensation upon the ground that the injury is not one provided for by the act—nay, more, that it is one which is expressly excluded therefrom—the question is quite different. Where such a condition exists we find nothing in the act which prevents the right of any employer from assailing the decision of the commission respecting ultimate liability. In other words, we find nothing in the act which authorizes the commission to deplete the insurance fund by devoting it to claims not covered by the act or to require employers or insurance carriers to pay any such claims. Nor do we find anything in the act which authorizes the commission to determine without right of review the question of ultimate liability under the act. To do that clearly is a judicial question, and when it arises, as in this case, the right to an adjudication by the courts cannot be denied."

That the question of whether a claimant under the Longshoremen's and Harbor Workers' Compensation Act is an employee of the kind specified in the act is jurisdictional seems clear both on reason and authority, and that whether this jurisdictional fact exists in a given case is a matter open to decision in the courts upon their independent judgment, both of the law and the facts, is held in the following additional cases:

Pine v. State Industrial Comm., 108 Okla. 185.

Hahnemann Hospital v. Industrial Board of Ill., 282 Ill., 316.

Thede Bros. v. Industrial Commission, 285 Ill., 483.

Paul v. Industrial Commission, 288 Ill., 532.

Dorlon Bros. v. Industrial Acc. Comm. of Cal., 173 Cal., 250.

Roberts v. Industrial Acc. Comm., 52 Cal. App., 31.

The rule permitting such a review is but an application of the general rule that when the sovereign power attaches conditions to the exercise of a sovereign right, the inquiry whether the conditions have been observed is a proper matter for judicial cognizance".

Miss. & R. River B. Co. v. W. C. Patterson, 98 U. S., 403.

Commrs. of Road Imp. Dist. No. 2 v. St. Louis S. W. Ry. Co., 257 U. S., 547.

The brief of the Solicitor General in effect concedes the right and power of the district court to determine for itself whether the Deputy Commissioner had jurisdiction, but assumes that the question of employment vel non is not a jurisdictional question. (Solicitor General's Brief, p. 12, 38-39) Conceding that the status of citizenship vel non raised a jurisdictional question in Ng Fung Ho v. White, 259 U. S., 276, the Solicitor General assumes that the status of employer and employee is not essential to the jurisdiction of the Deputy Commissioner. In the one case if the status of citizenship existed there was no jurisdiction. In the other, if the status of employee did not exist there was no jurisdiction. The Deputy Commissioner had no power or jurisdiction to act unless claimant was an employee of the kind specified in the Longshoremens' and Harborworkers' Compensation Act. That the existence of this status was jurisdictional is manifest from the terms of the act itself as well as from the authorities herein cited.

We respectfully submit, therefore, that the District Court, in any event, properly passed on the jurisdictional question of employment vel non according to its own independent judgment.

III.

TO DENY TO THE UNITED STATES DISTRICT COURTS THE POWER TO DETERMINE DE NOVO THE FACTS UPON WHICH THE JURISDICTION OF THE COMMISSIONER DEPENDS WOULD BE TO SUBJECT THE APPELLANT TO LIABILITY WITHOUT DUE PROCESS OF LAW.

It is provided by subdivision (c) of Section 19 of the act of March 4, 1927, 44 Stat. 1424 (33 U. S. C. A., Sec. 919 (c)) that:

> "The deputy commissioner shall make or cause to be made such investigations as he considers necessary in respect to the claim, and upon application of any interested party shall order a hearing thereon. If a hearing on such claim is ordered the deputy commissioner shall give the claimant and other interested parties at least ten days' notice of such hearing served personally upon the claimant and other interested parties * * * If no hearing is ordered within twenty days after notice is given as provided in subdivision (b), the deputy commissioner shall, by order, reject the claim or make an award in respect of the claim."

It is provided by subdivision (a) of Section 23 that:

> "In making an investigation or inquiry or conducting a hearing the deputy commissioner shall not be bound by common law or statutory rules of evidence or by technical or formal rules

of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties."

As we understand these provisions, it is made the duty or at least the privilege of the commissioner to make an award against an employer, based upon any information that he may obtain either in person or through a representative, in any manner whatsoever, wholly regardless of whether the source of information would be admissible in evidence against the employer or not, unless a hearing has been demanded, but if a hearing is demanded, then that the award must be based upon the evidence adduced at the hearing, at which the employer may be present and participate. If this be the proper construction of the language of the Statute, then it is, of course, perfectly clear that where a hearing is demanded, the award must be based upon evidence produced at that hearing. To provide for a hearing, and at the same time to authorize the commissioner to make an award based upon the result of his inqury, made either before or after the hearing, or upon any other matters not presented at the hearing, would convert the hearing into a farce; and would wholly deprive the employer of the benefit of the hearing provided for by the Statute. But it seems to have been the conception of the commissioner, that the hearing provided for by the Statute, was intended as merely an empty formality which would be fully satisfied if the hearing was granted, even though the award was predicated upon inquiries made either before or after the hearing in the absence of the employer, without any opportunity whatsoever on his part to inquire in regard thereto. When we inquire whether

the award was predicated upon the evidence adduced at the hearing, or upon the information obtained by the commissioner from other sources, and at other times, we find that the only information upon this subject afforded by the report of the commissioner must be obtained from the following recitation: (Rec. p. 83).

> "Such investigation in respect to the above entitled claim, having been made as is considered necessary, and a hearing having been held in conformity with law, the deputy commissioner makes the following: Finding of Facts."

Here follows the so-called Findings of Fact, which does not set forth the facts upon which the conclusion of employment was based, but merely states the conclusion therefrom that "the claimant above named was in the employ of the employer above named" etc.

As will be readily observed, it is impossible to ascertain from this award, to what extent it was based upon the investigation made by the commissioner prior to the hearing, and to what extent, if at all, it was based upon his conclusions from the evidence adduced at the hearing. The question, therefore, arises whether an award based in whole or in part upon an ex parte investigation conducted by the commissioner in the absence of the employer, and based upon unknown sources of information, whether mere rumors or any other class of incompetent evidence upon which the commissioner is pleased to rely, can be regarded as having been made in accordance with the law, so as to exclude the operation of subdivision b of Section 21, which authorizes the court to suspend or set the same aside

in whole or in part, through an injunction proceedings, or as to preclude the inquiry by the courts **de novo** as to the existence of the jurisdictional fact of employment upon which the whole power and jurisdiction of the commissioner rests. If it be true that the commissioner may render an award against the employer based in whole or in part upon private inquiry, or that the commissioner may proceed to make an award, as in this case, based in part upon his investigation before the hearing, as to which the employer is offered no opportunity of being heard or even so much as learning what it is that the commissioner relied upon, and the court may not inquire as to the existence of the jurisdictional fact of employment, as to which the commissioner's conclusion is predicated upon matters that are not shown by his report, or by any of the records of the proceedings before him, then, as is respectfully submitted, we have a proceedings to be conducted by a commissioner of very limited jurisdiction, and whose powers are predicated entirely upon the existence of the relation of employment, who may predicate an order by which the claimant may force his adversary to pay him the amount of the award, without the alleged employer having any right or power whatsoever to obtain a judicial determination as to whether the commissioner was acting within or or beyond his jurisdiction. If this be the case, then it is only necessary, in order to establish the liability of an alleged employer, and thus deprive him of his property under execution, that the commissioner shall find from any source of information which he may elect, that the matter does fall within his jurisdiction, and his award will become final and conclu-

sive for the reason that it need not even be made to appear from his report upon what his conclusions of jurisdiction are based, for it is perfectly apparent that the District Court could not review his conclusions upon the evidence upon which he based such conclusions, when that evidence does not appear from his report and cannot be ascertained by the court.

However, it is respectfully submitted that even where the conclusion of the court of limited jurisdiction that the matter in question falls within his jurisdiction is based upon the evidence taken by him at the hearing and reported to the court, so that it may be reviewed, the existence of the jurisdictional facts must still be determined **de novo** whenever the validity of the order is brought before a court of justice.

There are many cases in which the validity of the action of officials of various types is made to rest upon the existence of certain relations where it is held that the existence of such relation is a condition precedent to the lawful exercise of their authority and that the courts in examining their orders will inquire for themselves **de novo** as to the existence of such jurisdictional facts.

This rule has been applied where authority to act depended on whether the individual involved was an "enlisted man" and, therefore, in the army.

McClaughry v. Deming, 186 U. S., 49, 63.
Givens v. Zerbst, 255 U. S., 11, 19.
Runkle v. United States, 122 U. S., 543, 555.
United States vs. Grimley, 137 U. S., 147.
Whether he was a citizen or an alien.
Ng Fung Ho. v. White, 259 U. S., 276.

And, as shown by the many cases cited above, in compensation cases whether he is an employee at all and if so, whether he is an employee of the kind or class with which the compensation commission or commissioner is authorized to deal.

Authorities **supra.**

In the case of Sabariego v. Maverick, 124 U. S., 261, 292, this Court said:

> " 'Wherever one is assailed in person or his property,' said this court in Windson v. Mc Veigh, 93 U. S., 274, 277, 'there he may defend for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all Nations. A sentence of a court pronounced against a party, without hearing him or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal.' "

It would be hard, we think, to reconcile this language with any holding that the commissioner under the statute in question, could make an award against an alleged employer basing his conclusion upon whatever private inquiry he pleases to make without notice to the person to be thus condemned, and that his conclusions of jurisdiction could not be brought into question in the courts of justice upon any evidence except his report of such unsworn statements as he might have so elicited from strangers, without an opportunity of cross-examination. Indeed, so to hold would be to say that where a commissioner rendered an award based entirely upon the ex parte statement of the claimant that the person against whom he asserted a claim was his employer and failed to disclose to the court upon what his

conclusion was based, the result would necessarily be that the employer would be subjected to liability without a hearing, and thereby deprived of his property without due process, for a hearing is of no consequence whatsoever, if the award may be based upon private inquiries which have been conducted by a commissioner before the hearing took place.

The statute confers upon the commissioner certain limited powers. He does not stand in a position of a court of general jurisdiction. His entire jurisdiction is dependent upon the existence of the relation of employer and employee. These are the jurisdictional facts, for it is only as between an employer and an employee that the commissioner has any power to act, and this fact of employment must always remain subject to determination in some judicial tribunal. The distinction between the power of a court of general jurisdiction to determine the jurisdictional facts upon which its power rests and the power of a commissioner of limited jurisdiction to settle this question, was distinctly stated by Chief Justice Marshall as early as the case of Kempe's Lessee v. Kennedy, et al., 5 Cranch, 173, 185, where the court said:

> "This case differs from the case from third Institute in this. In that case the court was composed of special commissioners authorized to proceed, not in all cases of treason, but in those cases only in which an indictment had been taken before fifteen commissioners. Their error was not in rendering judgment against a person who was not proved by the indictment to have committed the crime, but who, if guilty, they had no power to try. The proceedings there were clearly coram non judice."

In the case of Hartford v. Poindexter, 84 Conn., 131; s. c. 79 Atl., 79, 83, the court said:

> "Municipal authorities in laying out and altering streets and establishing building lines act under special and limited authority. They are inferior tribunals. There is no presumption in favor of their jurisdiction as there is in the case of courts of general jurisdiction. Sears v. Terry, 26 Conn. 273, 280. The judgments of such courts, taken alone, are entirely disregarded, and the proceedings must show their jurisdiction. Kempe v. Kennedy, 9 U. S. 173, 185, L. Ed. 70. If the record shows jurisdiction it is prima facie evidence, but it may be attacked and contradicted in a collateral matter. Sears v. Terry, supra; Culver's Appeals, 48 Conn., 165, 173. 'Whoever relies on a judgment of a court of limited and special jurisdiction must aver and prove the facts necessary to give the court jurisdiction.' "

In the case of McClaughry v. Deming, 186 U. S., 49, 63, treating of a writ of habeas corpus, issued on behalf of an officer of volunteers to avoid a sentence of court-martial by the regular army, this court said, quoting from Runkle v. United States, 122 U. S., 543, 555:

> " 'A court-martial organized under the laws of the United States is a court of special and limited jurisdiction. It is called into existence for a special purpose and to perform a particular duty. When the object of its creation has been accomplished, it is dissolved. * * * Such also, is the effect of the decision of this court, in Wise v. Withers, 3 Cranch, 331, which, according to the interpretation given it by Chief Justime Marshall in Ex parte Watkins, 3 Pet. 193, 209, ranked a court-martial as 'one of those inferior courts of limited jurisdiction whose

judgments may be questioned collaterally.' To give effect to its sentences it must appear affirmatively and unequivocally that the court was legally constituted that it had jurisdiction; that all the statutory regulations governing its proceedings had been complied with, and that its sentence was conformable to law. Dynes v. Hoover, 20 How., 65, 80; Mills v. Martin, 19 Johns. 33. There are no presumptions in its favor, so far as these matters are concerned. As to them, the rule announced by Chief Justice Marshall in Brown v. Keene, 8 Pet. 112, 115, in respect to averments of jurisdiction in the courts of the United States, applies. His language is: 'The decisions of this court require that averment of jurisdiction shall be positive—that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred, argumentatively, from its averments.' All this is equally true of the proceedings of courts-martial. Their authority is statutory, and the statute under which they proceed must be followed throughout. The fact necessary to show their jurisdiction, and that their sentences were conformable to law, must be stated positively; and it is not enough that they may be inferred argumentatively."

Again, in the case of Givens v. Zerbst, 255 U. S., 11, 19, this court said:

"Conceding that the possession by the accused of a status essential to the exercise by the court-martial of its power was jurisdictional and therefore may not be held to have existed merely because of an estoppel, and conceding further that, except for the form of the charge, the record failed to establish such status, we are brought to determine, as was the lower court, whether evidence was admissible to show such capacity at the time of the trial and con-

viction and thus make clear the precise condition upon which the court acted. (Italics ours.)

Undoubtedly court-martial are tribunals of special and limited jurisdiction whose judgments, so far as questions relating to their jurisdiction are concerned, are always open to collateral attack. True, also, is it that in consequence of the limited nature of the power of such courts the right to have exerted their jurisdiction, when called in question by collateral attack, will be held not to have existed unless it appears that the grounds which were necessary to justify the exertion of the assailed authority existed at the time of its exertion and therefore were or should have been a part of the record. Wise v. Withers, 3 Cranch, 331; Ex parte Watkins, 3 Pet., 193, 209; Dynes v. Hoover, 20 How., 65; Runkle v. United States, 122 U. S., 543, 555; McClaughry v. Deming, 186 U. S., 49, 62-63.

The question before us is thus a narrow one, since it comes only to this: In a case, such as that before us, where the power to convoke a court-martial is established on the face of the record and the authority of the court to decide the particular subject before it is therefore undoubted, does the right exist, in the event of a collateral attack upon the judgment rendered, made on the ground that a particular jurisdictional fact upon which the court acted is not shown by the record to have been established, to meet such attack by proof as to the existence of the fact which the court treated as adequately present for the purpose of the power exerted?

Considering that subject in the light stated, we think the court below was right in admitting, as it did, evidence to show the existence of a military status in the accused, since it did not change the court-martial record but simply met the collateral attack by showing that at the time

of the trial the basis existed for the exertion by the court of the authority conferred upon it.

It is true that general expressions will be found in some of the reported cases to the effect that wherever a fact upon which the jurisdiction of a court-martial or other court of limited jurisdiction depends is questioned it must appear in the record that such fact was established. But these expressions should be limited in accordance with the ruling which we now make. We so conclude because the complete right to collaterally assail the existence of every fact which was essential to the exercise by such a limited court of its authority, whether appearing on the face of the record or not, is wholly incompatible with the conception that, when a collateral attack is made, the face of the record is conclusive. Indeed, some of the leading cases make clear the incongruity of any other conclusion and serve to indicate that the expressions as to the face of the record contemplate, not the record assailed by the collateral attack, but the record established as the result of the proof heard on such attack. Galpin v. Page, 18 Wall. 350; Runkle v. United States, 122 U. S., 543." (Italics ours.)

In this case of Givens v. Zerbst, 255 U. S., 11, 19, as will appear from the foregoing quotation, it was plainly stated that the jurisdictional facts when found by the limited tribunal should have been made part of the record, but it was further held that where they were not so stated, it might be established by proof of these facts in the court where the proceedings were sought to be enforced. This brings us to observe that it does not appear that the finding of the commissioner of the jurisdictional facts was based upon the proceedings at the hearing. Quite to the contrary, it affirmatively appears that the dep-

uty commissioner had made independent investigations outside of and beyond the hearing, and had determined the facts which he found either from independent investigation or from the evidence at the hearing without disclosing which, and surely, a finding based upon independent investigations, made before a hearing, cannot be regarded as part of the record of the hearing itself. It seems to us, therefore, to be clear that it does not appear from this record that the commissioner ever determined in any lawful manner that the jurisdictional facts existed. We submit that when the order was called for and granted, no action could be based upon any inquiries made beyond the same, and that the enforcement or the suspension of this award in the District Court, would necessarily rest upon the conclusions of the court itself as to whether the jurisdiction existed, which we understand to be the effect of the decision in the case of Givens v. Zerbst, supra.

It is insisted by the Appellant that the Commissioner acts, not as a court, but merely in an administrative capacity or as a fact finding agency, but this means but little, as no man can be bound by findings of any other man or body of men under whatsoever name or guise, unless his or their action is within the power or jurisdiction conferred, and unless his or their finding is based upon evidence offered at the hearing which he conducts. However, it is to be observed that it is provided by Section 921 of the United States Code Annotated, Title 38:

> "(a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this chapter, and, unless proceedings for the sus-

pension or setting aside are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter."

And that it is provided by subdivision c that upon the failure of the employer to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner may apply for enforcement of the order by the Federal District Court for the judicial district in which the injury occurs, or to the Supreme Court of the District of Columbia if the injury occurred in the District. **If the court determines that the order was made and served in accordance with law,** and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or other proper process.

It is manifest, therefore, that the finding of the deputy commissioner can be enforced only in the District Court, and there only "if the Court determines that the order was made and served in accordance with law." Here, therefore, we see that subdivision (c) imposes upon the District Court the duty to suspend or set aside the award through injunction proceedings if the order is not an accordance with law, and that the court is permitted to enforce the order only in the event that the court finds that the order was made and served in accordance with the law. It will, therefore, be observed that while the commissioner was authorized to make an award, this award could become final and operative even though not objected to, only through the action of the District Court, and that in either event, whether the enforce-

ment of the order should be enjoined in case of an application therefor, or whether the order should be enforced in case there was no application therefor, was dependent upon the finding of the District Court that the allowance had been made in accordance with the law, which judicial finding could not, of course, be based upon the ex parte inquiries by the commissioner. In this case, a hearing was had, and evidence was adduced upon the jurisdictional fact of employment. Had the order of allowance been based alone upon this hearing, then the question would be simply whether the finding of a court of limited jurisdiction, based upon the evidence adduced at a hearing, of which both parties had notice, was subject to a collateral attack, but where, as in this case, it appears from the award itself that the commissioner has undertaken to base his finding in part upon ex parte inquiries which he made beyond and outside of the hearing, it becomes perfectly apparent that if the question of jurisdiction may not be inquired into **de novo**, then we have a situation in which the commissioner, by rendering his report, based merely upon such investigation as he might in his discretion determine to make, forever preclude the alleged employer from any opportunity whatsoever to enjoy a constitutional guarantee of due process of law. In such event, the alleged employer is placed in a position where he may be made liable and his property subjected to the payment of any claim which the commissioner might approve from any investigation that he saw fit to make. If, as is here contended, this commissioner, whose power to act is conditioned entirely upon the existence of employment, can make an award based in part upon

private inquiry, which is not revealed by the record, and the District Court which must determine whether the award complies with the law or does not, may not try the question except upon the face of the report, and if an erroneous conclusion on the part of the commissioner as to his jurisdiction can be reviewed only upon a partial record, which he pleases to file, showing his doings at the hearing, but not his private inquiries upon which he has in part or in whole, based his conclusion, the result necessarily will be that those who are not employers may nevertheless be rendered liable and beyond the protection of the courts of justice, simply because the commissioner has made some private investigation from which he has been pleased erroneously to declare that he did in fact occupy the position of employer of the claimant.

IV.

THE LONGSHOREMEN'S AND HARBOR WORKERS' ACT SHOULD NOT BE CONSTRUED TO PROVIDE MERELY FOR AN APPEAL TO THE DISTRICT COURT ON QUESTIONS OF LAW.

In determining whether the jurisdiction of the District Court under the Act in question is strictly appellate, that is, confined to the consideration only of errors of law committed by the Deputy Commissioner, it should be noted in the first place that the jurisdiction of the Federal District Courts is not ordinarily appellate, but these courts are ordinarily courts of original jurisdiction.

It should further be noted that there is not one word in the Act in question providing in terms for

an appeal to the District Court. In view of the fact that the District Court is not ordinarily a court of appellate jurisdiction it has been held that even where an act of Congress expressly conferred upon the District Court "appellate jurisdiction" of the judgments and orders of United States Commissioners in cases arising under the Chinese exclusion law, but did not contain any provision as to how the appeal should be heard or what papers were to be filed, or on what testimony the hearing should be had, and did not provide that the hearing should be upon a transcript of the proceedings before the Commissioner, a Chinaman appealing to the District Court was entitled to a trial **de novo.**

Liu Hop Fong v. United States, 209 U. S., 453, 461-2.

In this case, the Court said:

"The Statute is curiously silent as to how the appeal is to be heard; it says nothing as to what papers are to be filed, or as to what testimony shall be given. In our view, giving the Chinaman an appeal in law contemplates that he shall be given the right of a hearing de novo before the District Judge before he is ordered to be deported. It is a serious thing to arrest a Chinaman who, as in this case, has been in this country a number of years, lawfully admitted upon certificate complying with the treaty, and order his deportation without giving him a full opportunity in which to assert his rights before a competent court. There being no provision in the Statute that the hearing shall be upon a transcript of the proceedings before the Commissioner, we think that when a party demands it, Congress intends he shall have the right to a hearing and judicial determination before the District Judge."

In the instant case, every consideration that led the Supreme Court of the United States, in the above cited case, to hold that the Chinaman was entitled to a trial de novo exists. There is, in the Act under consideration, absolutely no provision in regard to how the proceedings in the District Court are to be heard, nor is there any provision as to what papers are to be filed or as to what testimony shall be given. There is no provision that the hearing shall be upon a transcript of the proceedings before the Commissioner. There is no provision for bringing up any record by a bill of exceptions or otherwise. As a matter of fact, the Commissioner, under the express provisions of the Act, is not bound by the ordinary rules of evidence, or by the evidence taken at the hearing before him where the parties may appear and cross-examine, but he may, and according to his recitals (Rec. p. 7, 83) did, make such independent investigation as he sees fit and it is manifestly impossible to bring up in such instances, the evidence on which the Commissioner in fact acts.

Under the Act in question, there is not only no provision for an appeal, and no machinery provided for getting a record to the District Court, but the Act expressly provides for a hearing on a bill in equity for injunction, an original and not an appellate procedure. A hearing on a bill in equity requires, both allegations of fact to show equity, and proof of those facts before the court, to support the alleged equity. The Act refers to and describes the bill in equity as "proceedings for suspension or setting aside of such order", and it further refers to the "institution" of such proceedings. Such terms

certainly would not, ordinarily, indicate the taking of an appeal for the reversal of a cause on account of errors of law committed.

As already pointed out, there is no provision in the Act in question limiting the proof that complainant may make in support of his allegations in the bill that the order of the Commissioner is not in accordance with law, nor confining it to the evidence before the Commissioner. There is no requirement that the Commissioner shall make any finding of fact or that such finding of fact, when supported by substantial evidence, shall be conclusive.

There is no more reason, in natural justice, why a member of a crew, hurt aboard a vessel, or a stevedore loading or unloading a small vessel when hurt aboard the vessel shall be entitled to a hearing and adjudication by a court of competent jurisdiction on record evidence, than there is for a similar hearing on behalf of a longshoreman or stevedore who is loading a large vessel or working upon her. In each instance the claimant or libellant is seeking to recover money from the respondent, his employer, and the respondent is seeking to escape that liability and there is no more inherent justice in taking one employer's money without a hearing on legal evidence, than there is in taking the other's without such a hearing. Natural justice and the reason for having a judicial system at all, both argue for a full hearing on competent evidence unless the Act of Congress can, and in fact does, clearly prohibit it.

Again the case is essentially an admiralty case, and in admiralty on appeal to the Circuit Court of Appeals, the trial is de novo, (Reid vs. Fargo, 241

U. S., 544.—60 L. Ed. 1156; Duche vs. American Schooner "John Twohy", 255 U. S. 77; Munson Steamship Line vs. Miramor, 167 Fed., 960). Even if we should concede that Congress, under the Constitution can deny a trial de novo in the Federal District Court, dealing as we are now with the question of presumptions, it would seem that the intention of Congress to dispense with the rule applying to admiralty appeals generally should be very clearly stated in order to justify departure from the general rule.

If any presumption exists as to the intention of Congress as to procedure on appeal, it is in favor of rather than against a trial de novo in the District Court. To this effect, see the case of Duncan vs. The Frances Wright, 105 U. S., 381—26 L. Ed., 1100, as follows:

> "Undoubtedly, if Congress should give an appeal in admiralty causes and say no more, the facts as well as the law would be subject to review and re-trial."

In this same case it was stated that:

> "The constitutional requirements are all satisfied if one opportunity is had for a trial of all parts of the case. Anything beyond that is a matter of legislative discretion, not of constitutional right."

The converse of the foregoing proposition must be true, viz: that constitutional requirements are not satisfied except by at least one trial and that, by a constitutional Federal Court, of all parts of a case, viz: the facts as well as the law. If a party to an admiralty suit is entitled to a trial of his case by a constitutional court, this right surely extends to

the whole of his case, i. e., to the trial of the fact questions as well as those of law.

Two principal reasons are assigned for saying that the Act, by implication, prohibits a full hearing on competent evidence before a court of competent jurisdiction. The first of these is that the primary object of the statute was to give the employee a speedy remedy. The second is that the Act provides for the setting aside, suspension or modification of the order of the Commissioner if it is "not in accordance with the law."

As to whether the Act should be construed as depriving a party of a right to trial on competent evidence before a court of competent jurisdiction because the policy of the Act was to give speedy relief, it seems to us that the courts that have dealt with this matter have over-emphasized this purpose and have given it entirely too great weight. As a matter of fact, the primary purpose of the Act, as shown by the authorities, is to make the business of the employer bear a portion of the burden incident to the business, by requiring it to support, in part, the employee injured in the course of his employment, while he is disabled, or after his death, to support, in part, his dependents regardless of negligence or fault. Incidentally, of course, it was intended and expected that in view of the fact that responsibility existed irrespective of negligence or fault, there would be much less occasion for litigation and, therefore, much greater speed in most instances in getting the relief provided. That the act will have this effect is perfectly manifest from the fact that in many, if not most cases, compensation will be paid under the Act without litigation. This must be

comparatively few cases in which the facts would justify a controversy in regard to the payment of compensation. Where the facts are undisputed and the employer is clearly liable under the Act, there seems to be no reason for anticipating that a controversy will be instituted and prosecuted for mere purposes of delay whether the trial is de novo or only on questions of law. It is likely that an employer seeking delay would resort to the courts as readily in the one instance as in the other. As for delay incident to a trial de novo, it seems to us manifest that such delay would be inconsequential in any event. If a case is brought up from the Commissioner and is to be heard on the evidence before the Commissioner, either for an adjudication of the correctness of that decision on the independent judgment of the court, or on the question of whether the evidence is sufficient to support the order, the testimony before the Commissioner must be read to the court and presented to it to enable it to render a decision in either event. If the case comes up for trial de novo, it will necessitate a hearing of the witnesses before the court. Ordinarily, such a trial might involve several hours or a day's time, or even two days' time. In no event, however, would the trial de novo ordinarily involve any very considerable period of time, so that the idea that there would be much greater delay by a trial de novo is not, we submit, justified in fact.

In short, the cases in which there will be controversy are, and will be so few that in the main the purpose of a speedy relief to the employee will be accomplished. Where there is a controversy the delay incident to a trial de novo will not be material-

ly greater. In any event, such delay as may be necessary to the proper presentation of the facts to the court to enable it, as a court of competent jurisdiction, to give the parties a fair hearing on legal evidence, should not deprive a party of the right to such a hearing.

As to the use of the phrase "not in accordance with law," it is manifest that this phrase may in some instances be used as indicating an intention on the part of the legislative body to provide only for a review of errors at law. It is also manifest that it may, as appropriately be used to indicate an intention on the part of the Legislature to confer on the court the power to determine, on legal evidence and according to its independent judgment, whether the facts show that the order of the Commissioner was not in accordance with law. For instance, in this case, there can be no doubt that if the injury complained of did not occur on a vessel or on navigable waters, or if the relation of master and servant did not exist, or if the claimant was not engaged in a maritime employment, or if engaged in a maritime employment it was of such character that the State Compensation Laws could give relief, or if the employee was a master or member of a crew of a vessel, or was engaged by the master to load or unload or repair any small vessel under eighteen tons, or if the employee was an officer or employee of the United States, or any agency thereof, or of any State or Foreign Government, or any political subdivision thereof, or if the injury was caused solely by intoxication or willful intention of the employee to injure or kill himself or another employee, the order of the Commissioner was "not in accordance with law."

The Act in question does not, in terms, provide either for an appeal or for a reversal for errors in law, nor does it provide for remanding the case to the Commissioner in the event errors at law are found by the District Court. It provides for an original proceedings by a bill in equity to determine, not whether there has been an error or errors in law committed at the hearing before the Commissioner resulting in the order, but to determine whether the order is in accordance with law, that is, whether under the law as applied to the facts, the order is legally proper. The District Court is to detemine this question, not as an appellate court, but under an original proceedings in the form of a bill in equity, and there is no provision that it shall determine the question only on the evidence that was before the Commissioner. What was before the Commissioner need not be evidence received according to law, and, indeed, the order need not be based on evidence taken at the hearing at all, but may be based, in part, or entirely, on the private investigations of the Commissioner. Instead of providing for a reversal and remanding of the case, the Act provides only for suspending or setting aside the order in whole or in part. Let us suppose, therefore, that there have been glaring errors committed by the Commissioner in the exclusion of evidence offered at the hearing, what does the court do if it is confined to an examination only of the evidence before the trial court? Is it to say that an error or errors of law in excluding proper testimony made the order not in accordance with law, and that it must be set aside entirely? If it does, then the order would have to be set aside or its enforcement permanently en-

joined, and the claimant would either be defeated entirely, or he would have to rub out and start over before the Commissioner and where, we may ask, would be the saving in time in such a procedure or a saving in money either?

If the District Court could not hear the evidence, but was authorized only to determine whether, as a matter of law, there was any evidence to support the verdict, it would be compelled in every case, either to set aside the order by injunction for errors in law, or it would be compelled to affirm the order though relevant evidence that might have changed the result was excluded.

It is also worthy of note that while the Act in question is in the main modelled on the New York Workmen's Compensation Act, it omitted certain essential provisions of that Act expressly providing for an appeal in the ordinary sense and a review only of questions of law. The fact alone that these provisions have been omitted in adopting in part the New York Act is strongly persuasive that the Congress did not intend to provide for an appeal for the review only of questions of law. We have been unable to get access to a complete copy of the New York Act, but we find in the Workmen's Compensation State Law by Hill and Wilkin, at page 223, a summary of the New York Workmen's Compensation Act. According to that summary, it provides for hearing before a Commissioner on application of either party, and that at said hearing either party may present evidence and be represented by counsel. It also provides that the decision of the Board shall be final as to all questions of fact, and that an appeal may be taken to the Appellate Division of

the Supreme Court, and that the Board of Commissioners may certify on such appeal questions of law. This Act, therefore, expressly provides for an appeal which the present act does not do. It provides for certifying questions of law only, which the present act does not do, and it provides that the decision of the Commissioners shall be final as to all questions of fact, which the present act does not do. It seems clear, therefore, that Congress has eliminated from the New York Act upon which the Longshoremen's and Workmen's Compensation Act is in a measure modelled, those express provisions which make the decision of the Commissioner final on all questions of fact, and for the taking of an appeal and for the certifying only questions of law for review. If Congress had intended to adopt the provisions of the New York Act concerning an appeal and the hearing thereof, it is strange indeed, that instead of expressly providing that the Commissioner's finding of fact should be final and instead of providing for the certifying of questions of law only, it has seen fit to provide only an original proceeding by bill in equity for the purpose of setting aside, modifying or suspending the Commissioner's order if it is not in accordance with law. The very fact that Congress has excluded these provisions is a strong argument that it was never intended that there should be an appeal in the ordinary sense bringing up only questions of law, but rather that the District Court was given jurisdiction on a trial de novo in an original proceeding by a bill in equity to determine whether, under the facts and the law, the order of the Commissioner was correct.

That the liability asserted by the petitioner, Knudsen, is within the admiralty and maritime jurisdiction does not admit of doubt.

Southern Pacific Co. v. Jensen, 244 U. S., 205, 216, 217.
Knickerbocker Ice Co. v. Stewart, 253 U. S., 149.
State of Washington v. W. C. Dawson & Co., 264 U. S., 219.
Noguiera v. New York, N. H. & H. R. Co., 281 U. S., 128.

That exclusive jurisdiction of all admiralty and maritime cases was, prior to the Longshoremens' and Harborworkers' Compensation Act, expressly conferred upon the federal district courts saving the common law remedy, if any, in the state courts, is likewise not open to controversy, and this jurisdiction of the federal district courts to hear and determine all admiralty and maritime causes should not be taken away from those courts except by language plainly requiring that result. The language of the act under consideration not only fails to express any clear intent on the part of Congress to withdraw the jurisdiction of district courts over admiralty causes of this character, but, as pointed out above, is entirely consistent with the retention and exercise of this jurisdiction when either party sees fit to invoke its jurisdiction to review the award made by the commissioner. As already pointed out, the use of the phrase "when not in accordance with law" is equivocal and is certainly subject to the construction hereinabove contended for.

The only cases cited for petitioner involving an Act providing for reversal if the orders or decrees

are "not in accordance with law" are cases involving appeals from decisions of the Board of Tax Appeals where it is made perfectly manifest from other provisions of the Act that the appeal is an appeal in the ordinary sense and brings up only questions of law. In the tax appeals cases the assessment of taxes was, of course, a purely executive and administrative act. The Court of Appeals, a court ordinarily of appellate jurisdiction was given power to review the decision of the Board and if not in accordance with law to "modify or to reverse the decision of the Board". The Act expressly provides for the preparation of the record on appeal and defines the rules of evidence before the Board of Tax Appeals. Previously there had been no rules of evidence and the tax payer, after getting a ruling before the Board of Tax Appeals was at liberty to pay the tax and to sue to get it back, thereby getting a trial de novo, in the district court, of the entire question. The amended act, however, providing for rules of evidence before the Board of Tax Appeals, provided a method of preparation of the record on appeal and expressly provided for a review and reversal of the decision of the Board of Tax Appeals, so that from the entire Act it was perfectly manifest that an appeal in the ordinary sense was provided for. There is a manifest distinction between such cases and the present which is pointed out with great clearness and distinctness in the case of Liu Hop Fong v. United States, 209 U. S., 453.

Nothing else is urged for the taking away of jurisdiction so clearly conferred by Congress except the argument of convenience that to allow a trial de novo would result in somewhat delaying recovery in

such cases. As pointed out above, comparatively few cases under this act are likely to be appealed and the delay resulting from a de novo hearing in these few cases is so inconsequential, that the argument is of doubtful force. But certainly it must be that jurisdiction once clearly vested in a constitutional court should not be held to be withdrawn and vested in an administrative officer, board, or tribunal not learned in the law and not bound by ordinary rules of evidence by mere implication. Conceding the power of Congress, a party should not be deprived of the security of a judicial hearing heretofore plainly provided for, unless that result is made necessary by the clear and unmistakable language of the act now under consideration.

Ng Fung Ho v. White, 259 U. S., 276.
United States v. Woo Jan, 245 U. S. 552, 556.

We submit that there was no language of the act clearly or by necessary, or even proper implication, withdrawing a judicial hearing by the federal district courts in such maritime cases.

V.

TO CONSTRUE THE LONGSHOREMENS' AND HARBOR WORKERS' COMPENSATION ACT AS CONTENDED FOR BY PETITIONERS WOULD VIOLATE ARTICLE 3, SECTIONS 1 AND 2 OF THE CONSTITUTION AND WOULD NOT AFFORD DUE PROCESS AS REQUIRED BY THE FIFTH AMENDMENT.

It seems to us so manifest that the status of employer and employee must exist before the deputy commissioner ever has jurisdiction to make an

award under the Longshoremens' and Harbor Workers' Compensation Act, and that the district court in any event had the right and power to determine independently of the finding of the deputy commissioner whether this jurisdictional fact, without which he had no power to act, did exist, that there is no real necessity to enter upon a discussion of the constitutional question above suggested. However, in view of the extended discussion of this question in brief for petitioner, Knudsen, and the apparent misunderstanding of the thought underlying the opinion of the Court of Appeals and the District Court, we shall undertake somewhat to amplify that thought and to demonstrate its soundness as applied to the contention of petitioners.

The Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424; 33 U. S. C. A. Secs. 901-950 inclusive) deals by its express terms only with the liability of employers to employees who "are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry docks)" (33 U. S. C. A. Sec. 902 (4). This liability of the employer to make compensation to the employee is imposed "only if the disability or death (of the employee) results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through Workmen's Compensation proceedings may not be validly provided by State law * * ". (33 U. S. C. A. Sec. 903).

The act accordingly and necessarily deals only with a liability clearly within the exclusive admiralty and maritime jurisdiction.

Southern Pacific Co. v. Jensen, 244 U. S., 216, 217.
Knickerbocker Ice Co. v. Stewart, 253 U. S., 149.
State of Washington v. W. C. Dawson & Co., 264 U. S., 219.
Nogueira v. New York, N. H. & H. R. Co., 281 U. S., 128.

Congress under Article 111, Sec. 2 of the Constitution and Article 1, Sec. 8 thereof unquestionably "has paramount power to fix and determine the maritime law which shall prevail throughout the country."

Southern Pacific Co. v. Jensen, 244 U. S., 205, 214-15.

And it is said in State of Washington v. W. C. Dawson & Co., 264 U. S., 219; 44 S. Ct., 302, 305:

> "Without doubt Congress has power to alter, amend, or revise the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employers' liability law or general provisions for compensating injured employees * *."

As is said in New York Central R. R. Co. v. White, 243 U. S., 188, 201, of the New York Compensation law:

> "The statute under consideration sets aside one body of rules (regulating the rights of employer and employee) only to establish another system in its place."

The "system of rules", established by the act under consideration in the place of the rules of the admiralty law previously existing, just as truly involves rights and liabilities under the admiralty and maritime jurisdiction as did the original system of

rules. In short, the act creates a liability from an employer to an employee engaged in a maritime employment when injured upon the navigable waters. The right of action of the employee and the liability are essentially within the admiralty and maritime jurisdiction.

In Nogueira v. New York, N. H. and H. R. Co., 281 U. S., 128, an employee of a railroad was injured while engaged in loading a car float lying in navigable waters, and the question was whether he could maintain an action under the Federal Employers' Liability Act, or whether the Longshoremen's and Harbor Workers' Compensation Act afforded him an exclusive remedy. It was held that the latter act did afford his exclusive remedy, the court, through Mr. Chief Justice Hughes, saying:

> "In the present instance had the petitioner been engaged in intrastate commerce, his case still would have been within the maritime jurisdiction of the federal courts, and he would have been denied the benefit of the state compensation law. * * In these circumstances Congress dealt with the maritime employment of longshoremen whose injuries sustained on navigable waters would fall within the exclusive maritime jurisdiction, * * * ."

The Longshoremen's & Harbor Workers' Compensation Act though it creates a maritime liability is as truly a part of the maritime law as is the law of limited liability, of which it is said in Butler v. The Boston & Savannah S. S. Co., 130 U. S., 527; 32 L. Ed., 1017, 1024:

> "The law of limited liability, as we have frequently had occasion to assert, was enacted by Congress as a part of the maritime law of this country * * * ."

Or again, as is said in The Scotland, 105 U. S., 24, 29; 26 L. Ed., 1001, 1003:

> "But it is enough to say that the rule of limited responsibility is now our maritime rule. It is the rule by which through the act of Congress, we have announced that we propose to administer justice in maritime cases."

So the rule of liability of a maritime employer to a maritime employee for injuries or death on the navigable waters is a part of the general maritime law.

In such cases, it is manifest that the question of whether the employer is liable to his employee under the new system of rules established by the Longshoremen's and Harbor Workers' Compensation Act, is a matter of judicial inquiry—a matter of substantive law. And that this is true is expressly recognized in New York Central R. R. Co. v. White, 243 U. S., 188, 194, where it is said of the New York Compensation Act on which the Act in question is modelled:

> "Provision is made for the establishment of a Workman's Compensation Commission with administrative and **judicial functions, including authority to pass upon claims to compensation on notice to the parties interested.**" (Italics ours).

That the hearing before the Compensation Commissioner on evidence produced by both parties was considered the exercise of a judicial function is made further apparent by the court's proceeding to consider and determine whether such hearing on notice provided "due process" although no jury trial was prescribed.

In Western Metal Supply Co. v. Pillsbury, 172 Cal. 407, where a hearing before an Industrial Commission was provided in compensation cases, similar to that provided under the act now being considered, it was held that the commission was in the exercise of judicial power in conducting such a hearing. The Court said:

> The commission, in exercising these powers, is performing precisely the same functions that are performed by any court in passing upon questions brought before it. 'Judicial power,' says Mr. Justice Miller in his work on the Constitution, 'is the power of a court to decide and pronounce a judgment and carry it into effect between persons who bring a case before it for decision.' Muskrat v. U. S., 219 U. S., 346, 31 Sup. Ct., 250, 55 L. Ed., 246."

And on the same page the court clearly distinguishes hearings before the interstate commerce commission and similar bodies as follows:

> "We do not overlook the consideration that administrative boards and officers are often called upon to determine the facts and apply the law to those facts Such bodies and officers do not exercise judicial functions in the strict sense of that term. Ex parte Whitley, 144 Cal. 167, 77 Pac. 879, 1 Ann. Cas. 13. We might cite many cases dealing with the acts of bodies like the interstate commerce commission, boards of medical and dental examiners, and other boards or officers authorized to pass on various questions. These cases generally hold that judicial power is not exercised in the performance of the various functions committed to such boards. But none of these cases had to do with a situation like the present, where the law creates a right in one person against another and vests a board with the jurisdiction to hear complaints,

to issue process, to compel the attendance of witnesses, to determine conclusively the issues raised by the pleadings of contending parties, and to make a final judgment or award determining the rights of those parties. As was said in State v. Hawkins, 44 Ohio St. 109, 5 N. E. 232, one of the cases cited by the respondents:

"It may be safely conceded that power to hear and determine rights of property and of persons between private parties is judicial, and can only be conferred on the courts."

The court further pointed out that in the absence of a special constitutional amendment permitting it, such judicial powers could not be conferred on a commission, under constitutional provisions vesting judicial powers in constitutional courts.

Van Camp Sea Food Co. v. State Fish & Oyster Comm., 75 Cal. App. 764.

Similarly in Pine vs. State Ind. Comm., 107 Okla., 40, 229 Pac., 784, a hearing by an Industrial Commission, substantially identical with that provided for in the act under consideration, was held to be the exercise of judicial power, and it was further held that constitutional appellate courts could not be deprived of their jurisdiction to review such cases as they did other judicial proceedings.

Carstens v. Pillsbury, 172 Cal., 572.

Gouanillou v. Industrial Accident Commission, 184 Cal., 418.

Yosemite Lbr. Co. v. Ind. Acc. Comm, 187 Cal., 774.

And in Helfrick v. Dahlstrom Metallic Door Co., 256 N. Y., 199 it is said of a workman's compensation board or commission:

"Whatever confusion, however, there may be in distinguishing legislative from judicial acts

regarding rates does not arise in determining the status or injuries of a workman. Here the board or commission determines the events that have passed—the employment, the wages, the accident, the injury. Such readily submit to oral proof, and the process of finding them is of a judicial nature. Such a board has the dignity and the form of many of our courts, the only distinction being that of name."

These cases are in accord with Kansas v. Colorado, 206 U. S., 46, where it is said:

"Speaking generally, it may be observed that the judicial power of a nation extends to all controversies justiciable in their nature, and the parties to which or the property involved which may be reached by judicial process, and when the judicial power of the United States was vested in the Supreme and other courts, all the judicial power which the nation was capable of exercising was vested in those tribunals, and unless there be some limitations expressed in the Constitution, it must be held to embrace all controversies of a justiciable nature arising within the territorial limits of the nation, no matter who may be the parties thereto."

"By this (Article 3, Section 1 of the Federal Constitution) is granted the entire judicial power of the nation. Section 2, which provides that the judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, etc., is not a limitation or an enumeration. It is a definite declaration, a provision that the judicial power shall extend to, that is shall include the several matters particularly mentioned, leaving unrestricted the general grant of the entire judicial power."

In most cases arising under state compensation acts the objection that the commissioner is ex-

ercising judicial functions, is overcome by the fact that the parties have voluntarily agreed by election to have their controversy tried by such an arbitrator.

Booth Fisheries Co. v. Industrial Comm., 271 U. S., 208.
Deibeikis v. Link-Belt Co., 261 Ill. 454.
Borgnis v. Falk Co., 147 Wis. 327.
Greene v. Caldwell, 170 Ky. 571.
Hawkins v. Bleakly, 243 U. S., 210.

And in still others the objection is held untenable because the commissioner though authorized to hear evidence and make an award, is not authorized to enter a judgment enforceable by execution until an appeal is had to a court of competent jurisdiction and a trial de novo had.

Shea v. North Butte Mining Co., 55 Mont. 522.

Whatever may be true under the state constitutions, the question is whether Congress can deprive the constitutional federal courts of jurisdiction to hear and determine, according to their independent judgment of the law and the facts, controversies or cases involving the liability vel non of the employer to the employee under the new system of rules created by this act which imposes liability only when the disability or death occurs under such circumstances as to bring the case within the admiralty and maritime jurisdiction?

By Article 3, Section 1 of the Constitution of the United States, it is provided:

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and Inferior Courts, shall

hold their offices during good behavior, and shall at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office."

Section 2 of Article 3 of the Constitution of the United States provides:

"The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction * * ."

The distinction between the constitutional courts provided for by Article 3, section 1 of the Constitution, and legislative courts that may be created by Congress is quite clearly drawn in Ex parte Bakelite Corporation, 279 U. S., 438, where the court was considering the question of whether the court of Custom Appeals was a constitutional court, or a statutory or legislative court. The Supreme Court in that case said:

"When Article III of the Constitution declares, in Section 1, that the judicial power of the United States shall be vested in one Supreme Court and in 'such inferior courts as the Congress may from time to time ordain and establish,' and prescribes, in Section 2, that this power shall extend to cases and controversies of certain enumerated classes, it long has been settled that Article III does not express the full authority of Congress to create courts, and that other articles invest Congress with power in the exertion of which it may create inferior courts and clothe them with functions deemed essential or helpful in carrying those powers into execution. But there is a difference between the two classes of courts. Those established under the specific power given in Section 2 of Article III are called constitutional courts. They share in the exercise of the judicial power defined in

that section, can be invested with no other jurisdiction, and have judges who hold office during good behavior, with no power in Congress to provide otherwise. On the other hand, those created by Congress in the exertion of other powers are called legislative courts. Their functions always are directed to the execution of one or more of such powers and are prescribed by Congress independently of section 2 of Article III, and their judges hold for such term as Congress prescribes, whether it be a fixed period of years or during good behavior." (Italics ours.)

Also it was said,

"Legislative courts also may be created as special tribunals to examine and determine various matters, arising between the government and others, which from their nature do not require judicial determination and yet are susceptible of it. The mode of determining matters of this class is completely within congressional control. Congress may reserve to itself the power to decide, may delegate that power to executive officers, or may commit it to judicial tribunals."

The judicial power, that is, jurisdiction of constitutional courts, vests by virtue of the constitution and Congress is without power to withdraw the jurisdiction which the Constitution has thus vested in courts of this character and confer it in whole or in part on legislative tribunals or upon administrative officers or boards.

Ex parte Bakelight Corporation, 279 U. S., 438.

American Insurance Co. v. Carter, 1 Peters, 511, 546; 7 L. Ed., 242.

Den v. Hoboken Land & Imp. Co., 18 Howard, 272; 15 L. Ed. 372.

Kansas v. Colorado, 206 U. S., 46.

Nor can Congress add to the jurisdiction of constitutional courts so as to enable them to render decisions other than "judicial judgments."

Ex parte Bakelite Corporation, 279 U. S., 438.

As is said in American Insurance Co. v. Carter, 1 Pet., 511, 546; 7 L. Ed., 242, of the courts created by Congress for the Territory of Florida:

> "These courts, then are not constitutional courts, in which the judicial power conferred by the constitution on the general government, can be deposited. They are incapable of receiving it."

In Den v. The Hoboken Land & Improvement Co., 18 How., 272, 15 L. Ed., 372, Mr. Justice Curtis said:

> "To avoid misconstruction on so grave a subject, we think it proper to state that we do not consider Congress can either withdraw from judicial cognizance any matter which from its nature is the subject of a suit at common law, or in equity, or in admiralty; nor on the other hand can it bring under judicial power a matter which, from its nature is not a subject for judicial determination."

As pointed out above, the controversy in this case is "from its nature" the subject of a suit in admiralty which Congress cannot withdraw from judicial cognizance of the constitutional courts created under Article 3, Section 1 of the Constitution. One private party demands monied compensation of another under the new maritime rules created by this act, and the latter denies that liability. While he concedes that a maritime employer may be and is made liable by the act in question to pay his em-

ployee compensation for injuries suffered in such employment on navigable waters, he denies that he is such employer and claims that his property will be confiscated if he is compelled to pay the claimant. There is thus presented a judicial controversy or case involving the question of liability vel non under the new maritime law. While Congress can doubtless provide for a preliminary investigation by some administrative officer or board or by some legislative court, there must, nevertheless, be somewhere in the course of the proceedings a judicial trial of this question by a constitutional court acting on its own independent judgment upon the facts as well as the law, or due process is denied.

Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S., 287.

Bluefield Water Works & Imp. Co. v. Public Service Comm., 262 U. S., 679.

G. M. & St. P. R. R. Co. v. Minnesota, 134 U. S., 418.

Ng Fung Ho v. White, 259 U. S. 276.

To say that in some instances, that is when the common law affords a remedy, state courts may administer the admiralty law concurrently with the Federal District Courts begs the question and in like manner, to say that Congress may decline to confer or vest admiralty jurisdiction in some cases in which such jurisdiction might properly be conferred, also begs the question. The question is not whether a state court may in some instances exercise admiralty jurisdiction or whether the Congress may withhold or withdraw jurisdiction of some cases which might otherwise come within the admiralty jurisdiction, but the question is, whether when Congress does see fit to vest the federal judicial power it can vest

this power in a federal administrative officer or body or in a federal court other than a constitutional federal court. This question we submit is fully answered by the provisions of the constitution itself and by the cases above cited, namely:

American Insurance Co. v. Carter, 1 Peters, 511, 546; 7. L. Ed., 242.
Den v. Hobocken Land & Imp. Co., 18 Howard, 272; 15 L. Ed. 372.
Kansas v. Colorado, 206 U. S., 46.
Ex parte Bakelite Corporation, 279 U. S., 438.

Nor does the fact that territorial courts can be given the power to hear admiralty cases militate against our contention, for the reason that such courts are not, strictly speaking, "courts of the United States; or in other words, the jurisdiction with which they are invested is not a part of the judicial power defined by the third article of the Constitution", for the reason that Congress in legislating for the territories, "exercises the unlimited powers of the general and of a State Government."

The S. S. City of Panama v. Phelps, 101 U. S., 453.

Cases like Grant Smith-Porter Ship Co. v. Rohde, 257 U. S., 469, and Millers Indemnity Underwriters v. Brand, 270 U. S., 469, likewise do not reach the point. They are simply to the effect that where the rights and liabilities involved have no direct relation to navigation and the application of a local rule or law enacted by the state does not materially affect any characteristic feature of the maritime law or interfere with its proper harmony or uniformity, such cases may be withdrawn from the field of admiralty law by state enactment and exclusive jurisdiction of them conferred on the state courts.

But the act now under consideration by its express terms does not deal with any case where the local laws of the state can be made to apply under the rules announced in the cases last above cited, but by its terms deals only with a liability which cannot be withdrawn from the field of admiralty and maritime law. These cases, therefore, are not authority for saying that jurisdiction may be withdrawn from the constitutional federal courts and conferred on an administrative board or officer or upon a purely legislative tribunal.

The argument that this court has upheld state compensation acts providing for a final determination of liability of employer to employee by an administrative board subject only to appeal on question of law against the contention that these laws violated the due process clause of the Fourteenth Amendment, overlooks entirely the provisions of Article 3, sections 1 and 2 of the Constitution.

Congress is not free to make any process "due process", and the first test to determine whether due process is provided in a given case is to examine the constitution itself to see whether the process conflicts with any of its provisions. This rule was laid down in Martin v. Hunter's Lessee, 1 Wheaton, 304, where it is said:

> "To what principles, then are we to resort to ascertain whether this process, enacted by Congress, is due process? To this the answer must be two fold. We must examine the constitution itself, to see whether this process be in conflict with any of its provisions. If not found there, we must look to those settled usages and modes of proceeding existing in the common and statute law of England before the

emigration of our ancestors and which are shown not to have been unsuited in their civil and political condition by having been acted on by them after the settlement of this country."

When we look to the Constitution we find that the judicial power of the federal government in all cases in admiralty must be exercised by a constitutional court provided for by Article 3, section 1, and it is clear that unless a judicial hearing on the facts and the law is accorded the act would violate the due process clause of the Fifth Amendment.

Ng Fung Ho v. White, 259 U. S., 276.

"A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score."

United States v. Jim Fuey May, 241 U. S., 394, 401.

United States v. LaFranca, 282 U. S. 568.

"A condition (in a statute) should not be implied which, to say the least, would raise a grave question as to the constitutional validity of the act."

Russian Volunteer Fleet v. United States 282 U. S. 481.

The Longshoremen's & Harbor Workers' Compensation Act is without doubt a part of the admiralty and maritime law. Jurisdiction in the federal courts to determine whether a liability arises under this admiralty law must by the express terms of the Constitution be vested exclusively in the constitutional courts. Whatever may be true of the power of a state legislature to provide compensation to non-maritime employees and to confer on administrative bodies jurisdiction to hear and determine

liability of employers thereunder, the fact remains that by the mandatory provisions of Article III, Sections 1 and 2, jurisdiction of the constitutional federal courts to hear and determine cases within the admiralty and maritime jurisdiction whether or not liability is created by statute, cannot be taken from such courts and conferred upon an administrative board or officer. In other words, the admiralty law in so far as it involves controversies or cases between individuals involving liability of one individual to pay and of another individual to receive money for an injury or for death within the admiralty jurisdiction, must be administered by a constitutional federal court, and the federal constitution prohibits the administering of this law by any merely administrative board or body or by a tribunal of any other kind. If, therefore, the act under consideration be construed as taking away from these constitutional courts the power at some stage of the proceeding to determine this maritime liability on their own independent judgment of the law and the facts, it would violate Article 3 of the Constitution and would not afford due process under the Fifth Amendment.

It is respectfully submitted that the judgment of the Circuit Court of Appeals affirming the judgment of the District Court should not be disturbed.

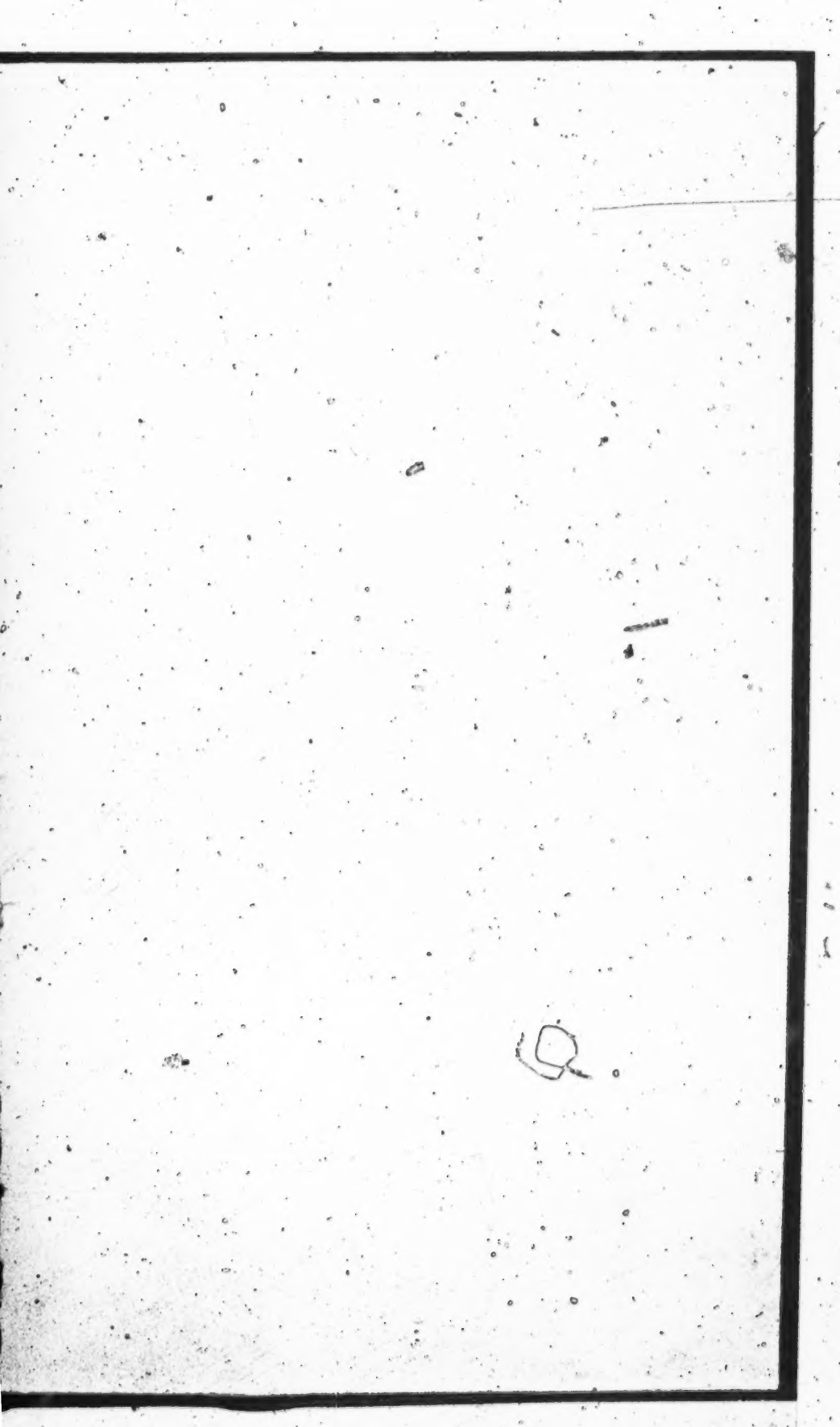
Respectfully submitted,

HARRY T. SMITH,

WM. G. CAFFEY,

Solicitors for Charles Benson.

October, 1931.



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SUPREME COURT OF THE UNITED STATES.

Nos. 19 and 20.—October Term, 1931.

Letus N. Crowell, as Deputy Commissioner for the Seventh Compensation District of the United States Employees' Compensation Commission, Petitioner,

19 vs.

Charles Benson.

Letus N. Crowell, as Deputy Commissioner for the Seventh Compensation District of the United States Employees' Compensation Commission, and J. B. Knudsen, Petitioners,

20 vs.

Charles Benson.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[February 23, 1932.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

This suit was brought in the District Court to enjoin the enforcement of an award made by petitioner Crowell, as deputy commissioner of the United States Employees' Compensation Commission, in favor of the petitioner Knudsen and against the respondent Benson. The award was made under the Longshoremen's and Harbor Workers' Compensation Act (Act of March 4, 1927, c. 509, 44 Stat. 1424; U. S. C. Tit. 33, secs. 901-950) and rested upon the finding of the deputy commissioner that Knudsen was injured while in the employ of Benson and performing service upon the navigable waters of the United States. The complainant alleged that the award was contrary to law for the reason that Knudsen was not at the time of his injury an employee of the complainant and his claim was not 'within the jurisdiction' of the deputy commissioner. An amended complaint charged that the Act was unconstitutional upon the grounds that it violated the due

process clause of the Fifth Amendment, the provision of the Seventh Amendment as to trial by jury, that of the Fourth Amendment as to unreasonable search and seizure, and the provisions of Article III with respect to the judicial power of the United States. The District Judge denied motions to dismiss and granted a hearing *de novo* upon the facts and the law, expressing the opinion that the Act would be invalid if not construed to permit such a hearing. The case was transferred to the admiralty docket, answers were filed presenting the issue as to the fact of employment, and the evidence of both parties having been heard, the District Court decided that Knudsen was not in the employ of the petitioner and restrained the enforcement of the award. 33 F. (2d) 137; 38 F. (2d) 306. The decree was affirmed by the Circuit Court of Appeals (45 F. (2d) 66) and this Court granted writs of certiorari. 283 U. S. 814.

The question of the validity of the Act may be considered in relation to (1) its provisions defining substantive rights and (2) its procedural requirements.

First. The Act has two limitations that are fundamental. It deals exclusively with compensation in respect of disability or death resulting "from an injury occurring upon the navigable waters of the United States" if recovery "through workmen's compensation proceedings may not validly be provided by State law," and it applies only when the relation of master and servant exists. Sec. 3.[1] "Injury", within the statute, "means accidental

[1]Section three of the Act as to "Coverage" provides:

"Sec. 3. (a) Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of—

"(1) A master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

"(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

"(b) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another".

injury or death arising out of and in the course of employment", and the term "employer" means one "any of whose employees are employed in maritime employment, in whole or in part", upon such navigable waters. Sec. 2 (2) (4). Employers are made liable for the payment to their employees of prescribed compensation "irrespective of fault as a cause for the injury." Sec. 4. The liability is exclusive, unless the employer fails to secure payment of the compensation. Sec. 5. The employer is required to furnish appropriate medical and other treatment. Sec. 7. The compensation for temporary or permanent disability, total or partial, according to the statutory classification, and in case of the death of the employee, is fixed, being based upon prescribed percentages of average weekly wages, and the persons to whom payments are to be made are designated. Secs. 6, 8, 9, 10. Employers must secure the payment of compensation by procuring insurance or by becoming self-insurers in the manner stipulated. Sec. 32. Failure to provide such security is a misdemeanor. Sec. 38.

As the Act relates solely to injuries occurring upon the navigable waters of the United States, it deals with the maritime law, applicable to matters that fall within the admiralty and maritime jurisdiction (Const. Art. III, sec. 2; *Nogueira* v. *N. Y., N. H. & H. R. Co.*, 281 U. S. 128, 138) and the general authority of the Congress to alter or revise the maritime law which shall prevail throughout the country is beyond dispute.[2] In limiting the ap-

[2]Waring *v.* Clarke, 5 How. 441, 457, 458; The Lottawanna, 21 Wall. 558, 577; Butler *v.* Boston & Savannah Steamship Co., 130 U. S. 527, 556, 557; In re Garnett, 141 U. S. 1, 14; The Hamilton, 207 U. S. 398, 404; Atlantic Transport Co. *v.* Imbrovek, 234 U. S. 52, 62; Southern Pacific Co. *v.* Jensen, 244 U. S. 205, 214, 215; Knickerbocker Ice Co. *v.* Stewart, 253 U. S. 149, 160; Washington *v.* Dawson, 264 U. S. 219, 227, 228; Panama R. R. Co. *v.* Johnson, 264 U. S. 375, 386, 388.

Important illustrations of the exercise of this authority are the Limitation of Liability Act of 1851 (9 Stat. 151; Hartford Accident & Indemnity Co. *v.* Southern Pacific Co., 273 U. S. 207, 213-215); the Seamen's Act of 1915 (38 Stat. 1185; Chelentis *v.* Luckenbach Steamship Co., 247 U. S. 372, 381, 384); the Ship Mortgage Act of 1920 (41 Stat. 1000; Morse Drydock & Repair Co. *v.* North Star, 271 U. S. 552, 555, 556); and the Merchant Marine Act of 1920, incorporating, in relation to seamen, the Federal Employers' Liability Act into the maritime law of the United States (41 Stat. 1007; Panama R. R. Co. *v.* Johnson, *supra;* Engel *v.* Davenport, 271 U. S. 33, 35; Panama R. R. Co. *v.* Vasquez, 271 U. S. 557, 559, 560; Northern Coal Co. *v.* Strand, 278 U. S. 142, 147). See U. S. C., Titles 33 and 46.

plication of the Act to cases where recovery "through workmen's compensation proceedings may not validly be provided by State law", the Congress evidently had in view the decisions of this Court with respect to the scope of the exclusive authority of the national legislature.[3] The propriety of providing by Federal statute for compensation of employees in such cases had been expressly recognized by this Court,[4] and within its sphere the statute was designed to accomplish the same general purpose as the workmen's compensation laws of the States.[5] In defining substantive rights, the Act provides for recovery in the absence of fault, classifies disabilities resulting from injuries, fixes the range of compensation in case of disability or death, and designates the classes of beneficiaries. In view of Federal power to alter and revise the maritime law, there appears to be no room for objection on constitutional grounds to the creation of these rights, unless it can be found in the due process clause of the Fifth Amendment. But it cannot be said that either the classifications of the statute or the extent of the compensation provided are unreasonable. In view of the difficulties which inhere in the ascertainment of actual dam-

[3]Southern Pacific Co. *v.* Jensen, 244 U. S. 205; Knickerbocker Ice Co. *v.* Stewart, 253 U. S. 149; Washington *v.* Dawson, 264 U. S. 219; Robins Dry Dock & Repair Co. *v.* Dahl, 266 U. S. 449. For decisions since the passage of the Act in question, see Messel *v.* Foundation Co., 274 U. S. 427; Northern Coal & Dock Co. *v.* Strand, 278 U. S. 142; London Guarantee & Accident Co. *v.* Industrial Commission, 279 U. S. 109, 125; Baizley Iron Works *v.* Span, 281 U. S. 222.

The application of State Workmen's Compensation Acts has been sustained where the work of the employee has been deemed to have no direct relation to navigation or commerce and the operation of the local law "would work no material prejudice to the essential features of the general maritime law". Western Fuel Co. *v.* Garcia, 257 U. S. 233, 242; Grant Smith-Porter Co. *v.* Rohde, 257 U. S. 469, 477; Millers' Indemnity Underwriters *v.* Braud, 270 U. S. 59, 64; Sultan Railway & Timber Co. *v.* Department of Labor, 277 U. S. 135, 137; Baizley Iron Works *v.* Span, supra, at pp. 230, 231. See, also, Red Cross Line *v.* Atlantic Fruit Co., 264 U. S. 109.

[4]Washington *v.* Dawson, 264 U. S. 219, 227, where the Court said "Without doubt Congress has power to alter, amend or revise the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employers' liability law or general provisions for compensating injured employees; but it may not be delegated to the several States".

[5]The Committee on the Judiciary of the Senate, in reporting upon the proposed measure, said (Sen. Rep. No. 973, 69th Cong., 1st sess., p. 16):

ages, the Congres was entitled to provide for the payment of amounts which would reasonably approximate the probable damages. See *Chicago, B. & Q. R. Co.* v. *Kyle*, 228 U. S. 70, 84; compare *Missouri Pacific Rwy. Co.* v. *Tucker*, 230 U. S. 346, 348. Liability without fault is not unknown to the maritime law,[6] and, apart from this fact, considerations are applicable to the substantive provisions of this legislation, with respect to the relation of master and servant, similar to those which this Court has found sufficient to sustain workmen's compensation laws of the States

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"The committee deems it unnecessary to comment upon the modern change in the relation between employers and employees establishing systems of compensation as distinguished from liability. Nearly every State in the Union has a compensation law through which employees are compensated for injuries occurring in the course of their employment without regard to negligence on the part of the employer or contributory negligence on the part of the employee. If longshoremen could avail themselves of the benefits of State compensation laws, there would be no occasion for this legislation; but, unfortunately, they are excluded from these laws by reason of the character of their employment; and they are not only excluded but the Supreme Court has more than once held that Federal legislation can not, constitutionally, be enacted that will apply State laws to this occupation. (Southern Pacific Co. v. Jensen, 244 U. S. 205; Knickerbocker Ice Co. v. Stewart, 253 U. S. 149; Washington v. Dawson & Co., 264 U. S. 219.)"

The House Committee in its report made the following statement (House Rep. No. 1767, 69th Cong., 2d sess., p. 20):

"The principle of workmen's compensation has become so firmly established that simple justice would seem to require that this class of maritime workers should be included in this legislation. . . .

"The bill as amended, therefore, will enable Congress to discharge its obligation to the maritime workers placed under their jurisdiction by the Constitution of the United Staes by providing for them a law whereby they may receive the benefits of workmen's compensation and thus afford them the same remedies that have been provided by legislation for those killed or injured in the course of their employment in nearly every State in the Union".

[6] See, *e. g.*, The Osceola, 189 U. S. 158, 169; The Iroquois, 194 U. S. 240, 241, 242. In Chicago, R. I. & P. R. Co. v. Zernecke, 183 U. S. 582, 586, the Court said: "Our jurisprudence affords examples of legal liability without fault, and the deprivation of property without fault being attributable to its owner. The law of deodands was such an example. The personification of the ship in admiralty law is another." See Holmes, "The Common Law," pp. 26-29; The China, 7 Wall. 53, 67, 68; Sherlock v. Alling, 93 U. S. 99, 105-108; Homer Ramsdell Co. v. Compagnie Générale Transatlantique, 182 U. S. 406, 413, 414. As to the basis of general average contribution, see Ralli v. Troop, 157 U. S. 386, 394, 395.

against objections under the due process clause of the Fourteenth Amendment. *New York Central R. R. Co.* v. *White*, 243 U. S. 188; *Mountain Timber Company* v. *Washington*, 243 U. S. 219; *Ward & Gow* v. *Krinsky*, 259 U. S. 503; *Lower Vein Coal Company* v. *Industrial Board*, 255 U. S. 144; *Madera Sugar Pine Company* v. *Industrial Accident Commission*, 262 U. S. 499, 501, 502; *Sheehan Company* v. *Shuler*, 265 U. S. 371; *Dahlstrom Metallic Door Company* v. *Industrial Board*, decided January 18, 1932. See *Nogueira* v. *N. Y., N. H. & H. R. Co., supra*, at pp. 136, 137.

Second. The objections to the procedural requirements of the Act relate to the extent of the administrative authority which it confers. The administration of the Act—'except as otherwise specifically provided'—was given to the United States Employees' Compensation Commission,[1] which was authorized to establish compensation districts, appoint deputy commissioners, and make regulations. Secs. 39, 40. Claimants must give written notice to the deputy commissioner and to the employer of the injury or death within thirty days thereafter; the deputy commissioner may excuse failure to give such notice for satisfactory reasons. Sec. 12. If the employer contests the right to compensation, he is to file notice to that effect. Sec. 14 (d). A claim for compensation must be filed with the deputy commissioner within a prescribed period, and it is provided that the deputy commissioner shall have full authority to hear and determine all questions in respect to the claim. Secs. 13, 19 (a). Within ten days after the claim is filed, the deputy commissioner, in accordance with regulations prescribed by the Commission, must notify the employer and any other person who is considered by the deputy commissioner to be an interested party. The deputy commissioner is required to make, or cause to be made, such investigations as he deems to be necessary and upon application of any interested party must order a hearing, upon notice, at which the claimant and the employer may present evidence. Employees claiming compensation must submit to medical examination. Sec. 19. In conducting investigations and hearings, the deputy commissioner is not bound by common law or statutory rules of evidence, or by technical or formal rules or procedure, except as the Act provides, but he is to proceed in such manner

[1]This Commission was created by the Act of September 7, 1916, c. 458, sec. 28, 39 Stat. 748; U. S. C., Tit. 5, sec. 778).

"as to best ascertain the rights of the parties." Sec. 23 (a). He may issue subpoenas, administer oaths, compel the attendance and testimony of witnesses, the production of documents or other evidence or the taking of depositions, and may do all things conformable to law which may be necessary to enable him effectively to discharge his duties. Proceedings may be brought before the appropriate Federal court to punish for misbehavior or contumacy as in case of contempt. Sec. 27. Hearings before the deputy commissioner are to be public and reported stenographically and the Commission is to provide by regulation for the preparation of a record. Sec. 23 (b)[8]. Compensation orders are to be filed in the office of the deputy commissioner, and copies must be sent to the claimant and employer. Sec. 19. The Act provides that it shall be presumed, in the absence of substantial evidence to the contrary, that the claim comes within the provisions of the Act, that sufficient notice of claim has been given, that the injury was not occasioned solely by the intoxication of the injured employee, or by the willful intention of such employee to injure or kill himself or another. Sec. 20. A compensation order becomes effective when filed, and unless proceedings are instituted to suspend it or set it aside, it becomes final at the expiration of thirty days. Sec. 21 (a). If there is a change in conditions, the order may be modified or a new order made. Sec. 22. In case of default for thirty days in the payment of compensation, application may be made to the deputy commissioner for a supplementary order declaring the amount in default. Such an order is to be made after investigation, notice and hearing, as in the case of claims. Upon filing a certified copy of the supplementary order with the clerk of the Federal court, as stated, judgment is to be entered for the amount declared in default, if such supplementary order "is in accordance with law." Review of the judgment may be had as in civil suits for damages at common law and the judgment may be enforced by writ of execution. Sec. 18.

The Act further provides that if a compensation order is "not in accordance with law", it "may be suspended or set aside, in

[8]In the regulations promulgated by the Commission in the form of instructions to deputy commissioners, provision was made for findings of fact. Report, United States Employees' Compensation Commission, for fiscal year ending June 30, 1930, p. 64. See Howard v. Monahan, 33 F. (2d) 220.

whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest" against the deputy commissioner making the order and instituted in the Federal district court for the judicial district in which the injury occurred.[9] Payment is not to be stayed pending such proceedings unless, on hearing after notice, the court allows the stay on evidence showing that the employer would otherwise suffer irreparable damage. Sec. 21 (b). Beneficiaries of awards or the deputy commissioner may apply for enforcement to the Federal district court and, if the court determines that the order "was made and served in accordance with law", obedience may be compelled by writ of injunction or other proper process. Sec. 21 (c)[10].

As the claims which are subject to the provisions of the Act are governed by the maritime law as established by the Congress and are within the admiralty jurisdiction, the objection raised by the respondent's pleading as to the right to a trial by jury under the Seventh Amendment is unavailing (*Waring* v. *Clarke*, 5 How. 441, 459, 460) and that under the Fourth Amendment is neither explained nor urged. The other objections as to procedure invoke the due process clause and the provision as to the judicial power of the United States.

(1.) The contention under the due process clause of the Fifth Amendment relates to the determination of questions of fact. Rulings of the deputy commissioner upon questions of law are

[9]In the District of Columbia, the proceedings are to be instituted in the Supreme Court of the District.

[10]The United States Employees' Compensation Commission estimates that the number of employees who at times are engaged in employments covered by the Act is in excess of 300,000. Report for fiscal year ending June 30, 1931, p. 66. The Commission states that 138,788 cases have been closed during the four years that the law has been in operation. *Id.*, p. 69. During the last fiscal year the injuries reported under the Act numbered 28,861, of which 156 were 'fatal' cases. The total number of cases disposed of during that year, including those brought forward from the preceding years, was 30,489, of which there were 13,261 'non-fatal' cases which caused no loss of time, and 4,067 of such cases in which the duration of disability did not exceed seven days. Compensation payments were completed in 11,776 cases. Hearings held by deputy commissioners during the fiscal year number 1217, of which 905 involved compensation payments. At the end of the fiscal year, there were 102 cases pending in Federal district courts wherein the plaintiffs asked review of compensation orders. *Id.*, 68-70.

without finality. So far as the latter are concerned, full opportunity is afforded for their determination by the Federal courts through proceedings to suspend or to set aside a compensation order (Sec. 21 (b)), by the requirement that judgment is to be entered on a supplementary order declaring default only in case the order follows the law (Sec. 18), and by the provision that the issue of injunction or other process in a proceeding by a beneficiary to compel obedience to a compensation order is dependent upon a determination by the court that the order was lawfully made and served (Sec. 21 (c)). Moreover, the statute contains no express limitation attempting to preclude the court, in proceedings to set aside an order as not in accordance with law, from making its own examination and determination of facts whenever that is deemed to be necessary to enforce a constitutional right properly asserted. See *Ohio Valley Water Company* v. *Ben Avon Borough*, 253 U. S. 287, 289; *Ng Fung Ho.* v. *White*, 259 U. S. 276, 284, 285; *Prendergast* v. *New York Telephone Co.*, 262 U. S. 43, 50; *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, 443, 444; *Phillips* v. *Commissioner*, 283 U. S. 589, 600. As the statute is to be construed so as to support rather than to defeat it, no such limitation is to be implied. *Panama Railroad Co.* v. *Johnson*, 264 U. S. 375, 390.

Apart from cases involving constitutional rights to be appropriately enforced by proceedings in court, there can be no doubt that the Act contemplates that as to questions of fact, arising with respect to injuries to employees within the purview of the Act, the findings of the deputy commissioner, supported by evidence and within the scope of his authority, shall be final. To hold otherwise would be to defeat the obvious purpose of the legislation to furnish a prompt, continuous, expert and inexpensive method for dealing with a class of questions of fact which are peculiarly suited to examination and determination by an administrative agency specially assigned to that task. The object is to secure within the prescribed limits of the employer's liability an immediate investigation and a sound practical judgment, and the efficacy of the plan depends upon the finality of the determinations of fact with respect to the circumstances, nature, extent and consequences of the employee's injuries and the amount of compensation that should be awarded. And this finality may also be